

No. 11715

United States
Circuit Court of Appeals
For the Ninth Circuit.

EDGAR A. SADLER,
Appellant,
vs.
CLARENCE T. SADLER,
Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 336

Upon Appeal from the District Court of the United States
for the District of Nevada

FILED
10-21-47

PAUL P. DURR

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

H. R. COOKE,
First National Bank Building,
Reno, Nevada,

JOHN D. FURRH, JR.,
First National Bank Building,
Reno, Nevada,
Attorneys for Appellant.

MESSRS. SPRINGMEYER & THOMPSON,
First National Bank Building,
Reno, Nevada,
Attorneys for Appellee. [1*]

* Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States in and
for the District of Nevada

No. 371

CLARENCE T. SADLER, on behalf of himself
and all other persons similarly situated who
choose to join as plaintiffs and share the ex-
penses of the litigation,

Plaintiff,

vs.

EDGAR A. SADLER and KATHRYN POWERS
SADLER, as Administratrix of the Estate of
Alfred R. Sadler, deceased,

Defendants.

COMPLAINT

Comes Now the plaintiff, on behalf of himself
and all other persons similarly situated who choose
to join as plaintiffs and share the expenses of the
litigation, and for cause of action alleges:

1. Plaintiff is a citizen of the State of California,
and defendants are citizens of the State of Nevada.
The matter in controversy exceeds, exclusive
of interest and costs, the sum of three thousand
dollars.

2. Reinhold Sadler, at the time of his death on
January 29, 1906, was the owner of and in the
possession of certain shares of stock in the Huntington
Valley Stock and Land Company, a corporation,
and in the Diamond Valley Livestock [2]

and Land Company, a corporation, and also was the owner of and in the possession of certain real and personal property in the State of Nevada, among which were what is known as the Diamond Valley ranch in Eureka County, Nevada, and the appurtenances also livestock, ranch equipment and other personal property upon said ranch.

Said Reinholt Sadler left a will leaving his property to his widow, Louisa Sadler, and to his five children, namely Wilhelmina Sadler Plummer, Edgar A. Sadler, Alfred R. Sadler, Bertha L. Sadler and Clarence T. Sadler. The said will, a copy of which is attached hereto and made a part hereof as Exhibit A, was filed for probate in the First Judicial District Court in the State of Nevada, in and for the County of Ormsby, on March 24, 1906, and letters of administration thereon duly were granted to Louisa Sadler, who duly qualified as executrix. Said Louisa Sadler died intestate on August 6, 1923. Said Bertha L. Sadler died intestate on April 29, 1921. Said Alfred R. Sadler died on March 5, 1944. On March 27, 1944, letters of administration upon the estate of said Alfred R. Sadler were granted to Kathryn Powers Sadler, who duly qualified as such administratrix, and ever since said date has been and still and now is the administratrix of the estate of said Alfred R. Sadler, deceased. Wilhelmina Sadler Plummer died on September 5, 1903.

3. On or about December 31, 1915, a complaint was filed in the District Court of the Fourth Judi-

cial District of the State of Nevada, in and for the County of Elko, by Huntington and Diamond Valley Stock and Land Company, a corporation, against the Huntington Valley Stock and Land Company, a corporation, the Diamond Valley Livestock Company, a corporation, Louisa Sadler, administratrix of the estate of Reinhold Sadler, [3] deceased, Louisa Sadler, Edgar A. Sadler, Bertha L. Sadler, Alfred R. Sadler, Clarence T. Sadler and others to quiet title to certain lands and the appurtenances, in Eureka County, Nevada, known as the Diamond Valley Ranch. A copy of the said complaint is attached hereto and made a part hereof as Exhibit B.

4. On or about February 14, 1918, a stipulation was entered into between plaintiff and defendants in said action whereby it was stipulated that the legal title to the said lands and property be transferred to Edgar A. Sadler and Alfred R. Sadler upon the payment of \$15,000 to plaintiff in said action. A copy of the said stipulation is attached hereto and made a part hereof as Exhibit C.

Thereafter and on or about March 2, 1918, a judgment and decree duly was entered in said action ordering that the said property be transferred to defendant Edgar A. Sadler and to Alfred R. Sadler. A copy of said decree is attached hereto as Exhibit D.

5. On the date that said judgment and decree was made and entered, namely on or about March 2,

1918, Hermann J. Sadler, as attorney in fact for the Huntington and Diamond Valley Stock and Land Company, a corporation, transferred and conveyed the said property and the appurtenances also all livestock, ranch equipment and other personal property upon said ranch to defendant Edgar A. Sadler and to Alfred R. Sadler. Thereafter and on or about March 12, 1918, the Huntington and Diamond Valley Stock and Land Company duly transferred and conveyed the said real property and appurtenances and the said livestock, ranch equipment and personal property to said defendant, Edgar A. Sadler and Alfred R. Sadler, and the [4] president of said company also conveyed the same to defendant Edgar A. Sadler and to Alfred R. Sadler by deed recorded in the office of the county recorder of Eureka County, Nevada, on March 23, 1918, a true and correct copy of which is attached hereto and made a part hereof as Exhibit I.

6. On or about March 2, 1918, and on the same date that the said judgment and decree was made and entered in the said action, defendant Edgar A. Sadler and Alfred R. Sadler mortgaged the said property and appurtenances to the Washoe County Bank, Reno, Nevada, for the sum of \$16,500, of which the sum of \$1500 was paid to the attorneys for defendants and the balance of \$15,000 was paid to plaintiff in accordance with the terms and provisions of the said stipulation attached hereto and made a part hereof as Exhibit C.

7. On March 2, 1918, that being the date on

which the said decree and on which the said deed was given by Hermann J. Sadler, attorney in fact for the Huntington and Diamond Valley Stock Company conveying the said Diamond Valley Ranch to defendant Edgar A. Sadler and to Alfred R. Sadler, and the date on which the said mortgage was given to the said Washoe County Bank for the said sum of \$16,500, as aforesaid, defendant Edgar A. Sadler and Alfred R. Sadler, for and in consideration of the heirs of Reinhold Sadler entering into the said stipulation, Exhibit C, as aforesaid, duly made and entered into an agreement in writing to hold in trust for the heirs of said Reinhold Sadler, deceased, the said real property and appurte- nances known as the Diamond Valley Ranch and also all livestock and other personal property upon said property. A true and correct copy of said agreement is attached hereto and made a part hereof as Exhibit L. [5]

8. Kathryn Powers Sadler, administratrix of the estate of Alfred R. Sadler, deceased, admits that she, under the said agreement, Exhibit L, holds the said Diamond Valley Ranch and the appurte- nances, livestock and other personal property in trust as provided in said agreement, Exhibit L. But the defendant Edgar A. Sadler, since the death of Alfred R. Sadler on or about March 5, 1944, has repudiated the trust and refuses and neglects to do anything in relation thereto and claims that he is under no obligation to fulfill the promises made by him in said agreement, Exhibit L, and asserts that

he holds said property free from any claim by plaintiff or by other persons similarly situated, under the terms and provisions of said agreement, Exhibit L. Said Diamond Valley Ranch and appurtenances, livestock, equipment and other personal property now are of the value of in excess of \$100,000.00; within six months last past defendant Edgar A. Sadler has refused and neglected and still and now refuses and neglects to account to or give a statement to plaintiff or to the other beneficiaries of the said trust named in said agreement, Exhibit L, or in any way to give a statement of business transactions, receipts, or disbursements by him on account of or through the terms and provisions of said agreement, Exhibit L.

Wherefore, plaintiff prays judgment:

1. That the defendant, Edgar A. Sadler, account for all properties, real and personal, received by him from, on account of, or through the said agreement, Exhibit L, and that he give an account of all his disbursements in connection with the said properties since the execution of the said agreement, Exhibit L.
2. That defendants Edgar A. Sadler and Kathryn Powers [5] Sadler, as administratix of the estate of Alfred R. Sadler, deceased, convey and transfer to plaintiff and to all other persons entitled thereto under the terms and provisions of said agreement, Exhibit L, the said Diamond Valley Ranch, with its appurtenances, livestock, ranch equipment, and other personal property.

3. For costs of suit.
4. For such other, further and different relief as may be meet and proper in the premises.

SPRINGMEYER &
THOMPSON,

/s/ GEORGE SPRINGMEYER,

/s/ SALLIE R. SPRINGMEYER,

/s/ BRUCE R. THOMPSON,

Attorneys for Plaintiff. [7]

EXHIBIT A

Eureka, Nevada, September 28th, 1881.

In the name of God, Amen:

I, Reinhold Sadler, of the Town of Eureka, County of Eureka, State of Nevada, Merchant being of sound mind and testament, that is to say:

First. I make, constitute and appoint Hermann J. Sadler of the City of San Francisco, State of California, and Louis Zadow of the town of Hamilton, White Pine County, State of Nevada, executors of this my last will and Testament to act without giving any bond, undertaking or security of any kind, in case of inability of Hermann J. Sadler or Louis Zadow, acting as executors of this my last will and Testament, then, P. A. Wagner of Carson City, Ormsby County, Nevada, to act in either place to manage my estate.

I give to my wife Louisa Sadler and to my children Minnie, Edgar, Alfred, all my property in the following manner: One Third of all my property arising from my estate, either personal or Real, also four life insurance Policies, and the remaining Two Thirds in equal shares to my children, part and share alike. In case of death of either of my children, then I leave the portion to which it would be entitled to remaining ones and my wife share & share alike.

I request the executors of this my last will and Testament to do as they deem best in the matter of my estate, asking them to sell my interest in the business of R. Sadler & Co. immediately and invest all the money arising from such sale and all other moneys coming in their hands on acct, of my estate, to invest the portion due my children and pay it to them at their becoming of age, and to pay to my wife Louisa Sadler, her share as soon as possible.

Should my wife conclude to sell the Homestead wherein we now live, it is my desire and wish that half the amount realized from the sale thereof be given to her and the other half shall be invested by my executors for the benefit of the children.

My interest in the several mines as annexed to this instrument shall be sold whenever H. J. Sadler of San Francisco shall deem it advisable. My interest in the business shall be wound up and sold to the best advantage as my executors may see fit and only the money, after my debts, belonging to said

business, are paid, shall be divided in the several proportions.

In witness whereof I have hereunto set my hand & seal the date and year first above written.

R. SADLER.

Subscribed to by the testator R. Sadler, in the presence of each of the undersigned. The said Testator at the time of subscribing to said will declared the same to be his last will and Testament and we in his presence and in the presence of each other and at the request of said Testator here subscribe our names as witnesses.

D. H. HALL,

W. P. STEICHELMAN.

Since this will being made a child was born to my wife and she is to share, share & share alike under the provisions of this will with the other children.

Eureka, June 6, 1885.

R. SADLER.

Eureka, Nev., June 12, 1891.

Since the within will has been made a boy having been born he is entitled under my will for his share like the balance of my children.

R. SADLER.

[Endorsed]: Last will & Testament of R. Sadler. Eureka, Nev., September 28th, 1881. [8]

Schedule 1

Interest in business as appears by

inventory on Aug. 15.....	\$37,788.38
H. Vorberg, property.....	8,500.00
Elko Mine, White Pine Co.....	1,000.00
Atlantic & Pacific Stock.....	1,000.00
Macon City Mine, Lone Pine Mine, Morning Star Mine, Sunsett Mine, Battery Mine, Sanches Mine.....	7,500.00
Latest Discovery	
Dwelling house & Lot.....	5,000.00
Cash on hand in hands of Mau, Sadler & Co.	2.000.00

	\$65,632.38

Interest in R.Rd. stock to be issued,
see Rives, no value yet.

Due Paxton & Co.	\$ 4,000.00
Due Louis Zadow.....	2,000.00
Due Wm. Zadow.....	1,500.00
Life Insurance Policies.....	15,500.00

	\$82,132.38

Less Liabilities	7,500.00

	\$74,632.38

EXHIBIT B

In the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko

HUNTINGTON AND DIAMOND VALLEY STOCK AND LAND COMPANY, a Corporation,

Plaintiff,

vs.

THE HUNTINGTON VALLEY STOCK AND LAND COMPANY, a Corporation, THE DIAMOND VALLEY LIVESTOCK AND LAND COMPANY, a Corporation, LOUISA SADLER, Administratrix of the Estate of Reinhold Sadler, Deceased, LOUISA SADLER, EDGAR SADLER, BERTHA SADLER, ALFRED SADLER, CLARENCE SADLER, ELDRED G. WINNIE, HARVEY CARPENTER, W. J. TOWNSEND, JOHN DOE, RICHARD ROE, JOHN DOE COMPANY, a Corporation, and JOE DOE COMPANY,

Defendants.

COMPLAINT OF ACTION TO QUIET TITLE

Now comes the Plaintiff in the above entitled action, and for ground of Complaint, alleges:

I.

That the Plaintiff is a Corporation duly organized and existing under and by virtue of the laws

of California, and doing business in the State of Nevada.

II.

That the Plaintiff Corporation is now and for a long time hitherto has been, the owner and entitled to the possession of those certain lots, pieces and parcels of land situate, lying and being in the County of Eureka, State of Nevada.

Township number 24 North, Range 52 East,
Mount Diablo Base and Meridian;

Section 12; E $\frac{1}{2}$ of NE $\frac{1}{4}$,
Section 13; NE $\frac{1}{4}$, S $\frac{1}{2}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$;
Section 23; E $\frac{1}{2}$ of E $\frac{1}{2}$
Section 24; All of Section 24
Section 25; N $\frac{1}{2}$, N $\frac{1}{2}$ of S $\frac{1}{2}$
Section 26; E $\frac{1}{2}$ of NE $\frac{1}{4}$.

Township number 24 North, Range 53 East,
Mount Diablo Base and Meridian;

Section 17, SW $\frac{1}{4}$ of SW $\frac{1}{4}$
Section 18, SW $\frac{1}{4}$, W $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$;
Section 19, W $\frac{1}{2}$, W $\frac{1}{2}$ of E $\frac{1}{2}$
Section 20, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$
Section 30, N $\frac{1}{2}$

Together with all the water of Big Shipley Springs, flowing or to flow to over, or through said lands hereinabove described; together with all water, water rights, dams, ditches, flumes, water ways and privileges used for the irrigation of said lands [10] from said springs; together with all of

those certain springs situate in the N.E. $\frac{1}{4}$ of Section 26, Township 24 North, Range 52 East, flowing or to flow to, over or through said lands hereinabove described; together with all the water, water rights, dams, ditches, flumes, waterways and privileges, used for the irrigation of said lands hereinabove described, from said springs. (Other lands.)

III.

Plaintiff alleges that The Huntington Valley Stock and Land Company, a corporation, The Diamond Valley Live Stock and Land Company, a Corporation, and the Eastern Nevada Investment Company, a Corporation, are all Corporations duly organized and existing under and by virtue of the laws of Nevada.

IV.

Plaintiff alleges that on the 24th day of March, 1906, the Will of Reinhold Sadler, Deceased, was admitted to probate in the County of Ormsby, State of Nevada, by an Order duly entered and made by the District Court of the First Judicial District, of the State of Nevada, in and for the County of Ormsby, and thereafter, Louisa Sadler was duly appointed administratrix with the will annexed, of the Estate of Reinhold Sadler, Deceased, by said Court.

That she thereafter qualified as such administratrix, and ever since has been, and now is the duly appointed, acting and qualified, administratrix of the Estate of Reinhold Sadler, deceased.

That said Reinhold Sadler died in said year in the County of Eureka, State of Nevada, leaving real and personal estate situated in the County of Ormsby, State of Nevada.

V.

Plaintiff alleges that the defendants herein claim an interest adverse to it in the above lands, and in all of said waters of said Creeks and Springs, flowing or to flow to, over or through said lands, and in and to all water, water rights, dams, ditches, flumes, water ways and the privileges used upon said creeks, and in or from or about said springs for the irrigation of said lands, and in all of said improvements on said lands, and that said claim is without any right whatsoever, and that said defendants have not any estate, right, title or interest whatever in said lands, premises, or any part thereof, or in or to said waters of said creeks or springs, flowing or to flow to, over, or through said lands, or any part thereof, or in or to said water, water rights, dams, ditches, flumes, water-ways, or privileges used upon said creeks, or in or from or about said springs for the irrigation of said lands; That the claim of the defendants operates as, and is a cloud upon the title of the plaintiff to said lands and premises, and to said water, water rights, dams, ditches, flumes, water ways and privileges used upon said creeks, or in or about or from said springs for the irrigation of said lands, and defendants threaten to continue and do continue to set up and claim title to said lands and premises,

and to said waters of said creeks, springs, adverse to Plaintiff, and the creeks and springs referred to in this paragraph of this complaint are the identical creeks and springs enumerated in subdivision two (2) of this complaint and the waters [11] of said creeks, and springs, and the water, water rights, dams, ditches, flumes, water ways and privileges are the identical waters, water rights, dams, ditches, flumes, waterways and privileges enumerated in subdivision two (2) of this complaint.

VI.

Plaintiff alleges that it is ignorant of the true names of the defendants, John Doe, Richard Roe, John Doe Company, a Corporation, and John Doe Company, and asks this Honorable Court that when the true names of said Defendants are discovered, that this complaint may be amended so that said true names may be substituted in place of the fictitious names of said unknown defendants.

Wherefore, Plaintiff prays:

I.

That Plaintiff be decreed to be the lawful owner in fee of the premises, and entitled to the possession thereof.

II.

That the Defendants may be required to set forth the nature of their claims, and that all adverse claims of the defendants may be determined by the decree of this Court.

III.

That by said decree, it shall be declared and adjudged that the Defendants have no estate of interest whatever in or to said lands or premises.

IV.

That the defendants be forever enjoined and debarred from asserting any claim in or to said lands and premises, adverse to the Plaintiff, and for such other relief as to this Honorable Court shall seem meet and agreeable to equity, and for its costs of suit.

HENDERSON AND CAINE,
R. C. VAN FLEET,

Attorney for Plaintiff.

State of Nevada,
County of Elko—ss.

Hermann J. Sadler, being first duly sworn, deposes and says: that he is the Vice President of the Corporation Plaintiff in the above entitled action; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are herein stated on information and belief, and that as to those matters, he believes it to be true.

HERRMANN J. SADLER.

Subscribed and sworn to before me this 31st day of December, A. D. 1915.

[Seal]

MORLEY GRISWOLD. [12]

EXHIBIT C

In the Fourth Judicial District Court of the State
of Nevada, in and for the County of Elko

No. 2380

HUNTINGTON AND DIAMOND VALLEY
STOCK AND LAND COMPANY, a corpora-
tion,

Plaintiff,

vs.

THE HUNTINGTON VALLEY STOCK AND
LAND COMPANY, a corporation, THE DIA-
MOND VALLEY LIVESTOCK AND LAND
COMPANY, a corporation, EASTERN NE-
VADA INVESTMENT COMPANY, a corpora-
tion, LOUISA SADLER, administratrix of
the Estate of Reinhold Sadler, Deceased,
LOUISA SADLER, EDGAR SADLER,
BERTHA SADLER, ALFRED SADLER,
CLARENCE SADLER, ELDRED G. WIN-
NIE, HARVEY CARPENTER, W. G.
TOWNSEND, JOHN DOE, RICHARD ROE,
JOHN DOE COMPANY, a corporation, and
JOHN DOE COMPANY,

Defendants.

STIPULATION

Know All Men by These Presents that the under-
signed do hereby stipulate and consent that judg-
ment may be entered in the above entitled action,
as follows:

1. That it be adjudged and decreed that the defendants, Edgar Sadler and Alfred Sadler, are the owners and entitled to the possession of all the property described in plaintiff's complaint, which is situate in the County of Eureka, State of Nevada, and known as the Diamond Valley Ranch, a more particular description of said property to be inserted in said decree, their title thereto quieted, and that none of the other parties to this action have any right, title or estate in said property, or any part thereof.
2. That the plaintiff be adjudged the owner and entitled to the possession of all the rest of the lands and premises [13] described in plaintiff's complaint, its title thereto quieted, and that none of the other parties to this action have any right, title or estate in said property, or any part thereof.
3. That the defendants take nothing by their several counter-claims.
4. That the money to be paid by the said Edgar Sadler and Alfred Sadler to the plaintiff as a consideration for this settlement and decree, shall be solely the obligation of said Edgar Sadler and Alfred Sadler, and that none of the parties hereto shall be in any wise personally liable therefor.
5. That each party to this action pay its or their own costs herein.
6. That judgment be entered in accordance with this stipulation, and that our attorneys in said action and said Edgar Sadler and said Alfred Sad-

ler are authorized to take such proceedings and execute any and all papers necessary and proper to carry this stipulation into full force and effect.

Dated: February 14, 1918.

CLARENCE SADLER,

By ALFRED R. SADLER,

His Attorney in Fact,

LOUISA SADLER,

As Administratrix of the
Estate of Reinhold Sadler,
deceased,

LOUISA SADLER,

BERTHA L. SADLER,

EDGAR SADLER,

ALFRED R. SADLER,

HUNTINGTON & DIAMOND
VALLEY STOCK &
LAND CO.,

By HERMANN J. SADLER,

Vice Pres. and

Attorney in Fact,

CAREY VAN FLEET,

CHAS. B. HENDERSON,

Attys. for Plaintiff. [14]

In the Fourth Judicial District Court of the State
of Nevada, in and for Elko County

Endorsed: No. 2380

HUNTINGTON AND DIAMOND VALLEY
STOCK AND LAND CO., a corp.,

Plaintiff,

vs.

THE HUNTINGTON VALLEY STOCK AND
LAND CO., a corp., et al.,

Defendants.

STIPULATION

Service of the within by copy, admitted,
191....., Attorneys for

Filed this 2nd day of March, 1918.

M. J. KEITH,

Clerk,

MAE McNAMARA,

Deputy.

CHENEY, DOWNER,

PRICE & HAWKINS,

Reno, Nevada,

Attorneys for

Defendants.

[Certificate attached.]

State of Nevada,
County of Elko—ss.

I, Mae E. Caine, County Clerk and Ex-Officio

Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed is a full, true and correct copy of Stipulation in Civil Action No. 2380, Huntington and Diamond Valley Stock and Land Co., a Corp., Pltf., vs. The Huntington Valley Stock and Land Co., et al., Dfts., filed 3/2/18, as the same appears on file and of record in my office.

Witness my hand and the seal of said Court affixed this 22nd day of April, A. D. 1944.

MAE E. CAINE,
Clerk,

By M. K. MAWN,
Deputy Clerk. [15]

EXHIBIT D

In the Fourth Judicial District Court of the State
of Nevada, in and for the County of Elko

HUNTINGTON AND DIAMOND VALLEY
STOCK AND LAND COMPANY, a corpo-
ration,

Plaintiff,

vs.

THE HUNTINGTON VALLEY STOCK AND
LAND COMPANY, a Corporation, THE DIA-
MOND VALLEY LIVE STOCK AND LAND
COMPANY, a corporation, EASTERN NE-
VADA INVESTMENT COMPANY, a corpo-
ration, LOUISA SADLER, Administratrix of
the Estate of Reinhold Sadler, Deceased,
LOUISA SADLER, EDGAR SADLER,
BERTHA SADLER, ALFRED SADLER,
CLARENCE SADLER, ELDRED G. WIN-
NIE, HARVEY CARPENTER, WILLIAM
SPINNER, W. J. TOWNSEND, JOHN DOE,
RICHARD ROE, JOHN DOE COMPANY,
a corporation, and JOHN DOE COMPANY,

Defendants.

DECREE

This cause having this day been regularly brought
on for hearing, upon the amended complaint, an-
swer, counter-claims, and the stipulation of the
parties, filed herein, and it having been stipulated

by and between the plaintiff and defendants, Louisa Sadler in her individual capacity, Louisa Sadler, as administratrix of the Estate of Reinhold Sadler, Deceased, Edgar Sadler, Bertha Sadler, Alfred Sadler, Clarence Sadler, and their respective attorneys, that judgment be entered in accordance with the stipulation on file herein, and the Court having heard the evidence of witnesses and the muniments of title of Huntington and Diamond Valley Stock and Land Company having been admitted into evidence, and the law and premises having been heard and understood by the Court herein, and the Court being fully apprised of the matters in said action brought before it, [16]

It is now Ordered, Adjudged and Decreed:

I.

That the defendants, Louisa Sadler, Louisa Sadler, Administratrix of the Estate of Reinhold Sadler, Deceased, and Edgar Sadler, take nothing by their counter-claims heretofore filed in the above entitled action, and that they and each of them be denied the relief prayed for in said counter-claims, and that they be adjudged to be entitled to no counter-claims of whatsoever nature against plaintiff herein.

II.

That the plaintiff have judgment as prayed for in its complaint herein against defendants and each and all of them, quieting title to the premises and water rights hereinafter described; that all adverse

claims of the defendants and each of them, and all persons claiming or to claim said premises or any part thereof, through or under said defendants or either of them, are hereby adjudged and decreed to be invalid and groundless, and that the plaintiff be, and it is hereby declared and adjudged to be the true and lawful owner of the land hereinafter in this paragraph described and every part and parcel thereof, and that its title thereto be adjudged to be quieted against all claims, demands or pretensions of the defendants or either of them, she are perpetually stopped from setting up any claims thereto, or any part thereof. Said premises are bounded and described as follows, to-wit:

Those certain lots, pieces and parcels of land situated, lying and being in the County of Elko, State of Nevada, and more particularly described as follows:

Township Number 27 North, Range number (55) East, Mount Diablo Base and Meridian. [17]

Section Ten (10). The southwest quarter of the southwest quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$).

Section Fourteen (14). The southwest quarter of the southwest quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$).

Section Fifteen (15). The north half of the northwest quarter (N $\frac{1}{2}$ of NW $\frac{1}{4}$) and the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$); the southwest quarter of the northeast quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$); the north half of the southeast quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$), and the southeast quarter of the southeast quarter (SE $\frac{1}{4}$ of SE $\frac{1}{4}$).

Section Twenty-two (22). The northwest quarter of the northeast quarter (NW $\frac{1}{4}$ of NE $\frac{1}{4}$).

Section Twenty-three (23). The west half of the west half (W $\frac{1}{2}$ of W $\frac{1}{2}$). The southeast quarter of the southwest quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$).

Section Twenty-five (25). The south half of the south half (S $\frac{1}{2}$ of S $\frac{1}{2}$).

Section Twenty-six (26). The east half of the west half (E $\frac{1}{2}$ of W $\frac{1}{2}$), the southwest quarter of the southwest quarter (SW $\frac{1}{4}$ of SW $\frac{1}{4}$), the south half of the southeast quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$), the southwest quarter of the northeast quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$).

Section Thirty-four (34). The southeast quarter of the southeast quarter (SE $\frac{1}{4}$ of SE $\frac{1}{4}$).

Section Thirty-five (35). The northwest quarter (NW $\frac{1}{4}$); the west half of the southwest quarter (W $\frac{1}{2}$ of SW $\frac{1}{4}$), and the northeast quarter of the southwest quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$).

Township number 26 North, Range 55 East,
Mount Diable Base and Meridian.

Section Two (2). The northwest quarter of the northwest quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$).

Section Three (3). The east half of the east half (E $\frac{1}{2}$ of E $\frac{1}{2}$), the west half of the southeast quarter (W $\frac{1}{2}$ of SE $\frac{1}{4}$).

Section Ten (10). The southwest quarter of the southeast quarter (SW $\frac{1}{4}$ of SE $\frac{1}{4}$).

Section Fifteen (15). The west half of the east half (W $\frac{1}{2}$ of E $\frac{1}{2}$), the northeast quarter of the northeast quarter (NE $\frac{1}{4}$ of NE $\frac{1}{4}$).

The following lots, pieces and parcels of land situate, lying and being in the County of White Pine, State of Nevada, and more particularly described as follows: [18]

Township number 26 North, Range number 55 East, Mount Diablo Base and Meridian.

Section Twenty-two (22). The west half of the northeast quarter ($W\frac{1}{2}$ of $NW\frac{1}{4}$), the southeast quarter of the northeast quarter ($SE\frac{1}{4}$ of $NW\frac{1}{4}$), and the east half of the southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$).

Section Twenty-seven (27). The east half of the northwest quarter ($E\frac{1}{2}$ of $NW\frac{1}{4}$), the northeast quarter of the southwest quarter ($NW\frac{1}{4}$ of $SW\frac{1}{4}$).

Township number 25 North, Range number 55 East, Mount Diablo Base and Meridian.

Section Two (2). The northwest quarter of the southwest quarter ($NW\frac{1}{4}$ of $SW\frac{1}{4}$).

Section Eleven (11). The east half of the northwest quarter ($E\frac{1}{2}$ of $NW\frac{1}{4}$), the north half of the southwest quarter ($N\frac{1}{2}$ $SW\frac{1}{4}$).

Section Fourteen (14). The east half of the west half ($E\frac{1}{2}$ of $W\frac{1}{2}$).

Section Twenty-three (23). The west half of the east half ($W\frac{1}{2}$ of $E\frac{1}{2}$), the east half of the northwest quarter ($E\frac{1}{2}$ of $NW\frac{1}{4}$).

Section Twenty-six (26). The west half of the northeast quarter ($W\frac{1}{2}$ $NE\frac{1}{4}$), the west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$).

Section Thirty-four (34). The east half of the northeast quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$), the southwest

quarter of the northeast quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$), the west half of the southeast quarter (W $\frac{1}{2}$ of SE $\frac{1}{4}$), the northeast quarter of the southeast quarter (NE $\frac{1}{4}$ of SE $\frac{1}{4}$).

Section Thirty-five (35). The northwest quarter of the northwest quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$).

Township number 24 North, Range 55 East, Mount Diablo Base and Meridian.

Section Ten (10). The southeast quarter (SE $\frac{1}{4}$).

The above described lands being more particularly known as the Huntington Valley Ranch, in the Counties of Elko and White Pine, in the State of Nevada; together with all waters of Huntington and Connors Creeks, Huntington Creek being also known as Hamilton Creek, flowing or to flow to, over, or through said lands just described; together with all [19] the water, water rights, dams, ditches, flumes, water-ways, and privileges used upon said creek for the irrigation of said land;

Together with all the waters of Mitchell and Dry Creeks, tributaries of said Huntington and Connors Creeks, flowing or to flow to, over or through said lands; together with all the water, water rights, dams, ditches, flumes, water-ways and privileges used upon said creeks for the irrigation of said lands; subject, however, to the prior right of Charles Mitchell upon said Mitchell Creek, together with all the waters of a certain creek tributary to said Huntington Creek running through the south half of the south half (S $\frac{1}{2}$ of S $\frac{1}{2}$) of Section Twenty-five (25) Township Twenty-seven (27)

North, Range Fifty-five (55) East, M.D.B.&M., in a general westerly direction, and flowing or to flow to, over and through said lands; together with all the water, water rights, dams, ditches, flumes, water-way and privileges used upon said Creek for the irrigation of said lands.

Also all the following pieces and parcels of real property situate, lying and being in the County of White Pine, State of Nevada.

Township number 20 North, Range number 55 East, Mount Diablo Base and Meridian.

Section Fourteen (14). The southeast quarter ($SE\frac{1}{4}$), the south half of the northwest quarter ($S\frac{1}{2} NW\frac{1}{4}$).

Section Fifteen (15). The southeast quarter of the northeast quarter ($SE\frac{1}{4}$ of $NE\frac{1}{4}$).

Township number 18 North, Range number 58 East, Mount Diablo Base and Meridian.

Section Seventeen (17). The southeast quarter of the northwest quarter ($SE\frac{1}{4}$ of $NW\frac{1}{4}$), the northeast quarter of the southwest quarter ($NE\frac{1}{4}$ of $SW\frac{1}{4}$). [20]

Section Twenty (20). The southeast quarter of the northwest quarter ($SE\frac{1}{4}$ of $NW\frac{1}{4}$).

Together with all the waters of Antelope Springs flowing or to flow to, over, or through said lands; together with all the water, water rights and privileges used upon said springs for the irrigation of said lands; together with all the waters of certain springs situated in the Southeast quarter ($SE\frac{1}{4}$) of Section Fourteen (14), Township

Twenty (20) North, Range Fifty-five (55) East, M.D.B. and M., flowing or to flow to, over or through said lands hereinbefore described; together with all the water, water rights and privileges used upon said springs for the irrigation of said lands.

Township number 23 North, Range number 51 East, Mount Diablo Base and Meridian.

Section Thirteen (13). The north half of the southwest quarter ($N\frac{1}{2}$ of $SW\frac{1}{4}$).

Section Fourteen (14). The north half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$).

Section Twenty-four (24). The west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$).

Section Twenty-six (26). The northwest quarter of the northeast quarter ($NW\frac{1}{4}$ of $NE\frac{1}{4}$).

Section Twenty-seven (27). The northeast quarter of the southeast quarter ($NE\frac{1}{4}$ of $SE\frac{1}{4}$).

Township number 24 North, Range number 51 East, Mount Diablo Base and Meridian.

Section Ten (10). The southeast quarter of the southwest quarter ($SE\frac{1}{4}$ of $SW\frac{1}{4}$) and the southwest quarter of the southeast quarter ($SW\frac{1}{4}$ of $SE\frac{1}{4}$).

Section Eleven (11). The northwest quarter of northwest ($NW\frac{1}{4}$ of $NW\frac{1}{4}$).

Section Fifteen (15). The northwest quarter of the northeast quarter ($NW\frac{1}{4}$ of $NE\frac{1}{4}$), the southwest quarter of the northwest quarter ($SW\frac{1}{4}$ of $NW\frac{1}{4}$) and the northeast quarter of the southwest quarter ($NE\frac{1}{4}$ of $SW\frac{1}{4}$).

Together with all the water of Vanina and Hen-

derson Creeks, flowing or to flow through, over or to said lands herein above described; together with all the water, water rights, dams, ditches, flumes, water-ways and privileges used upon said creeks for the irrigation of said lands; together with all the waters of certain springs situate in the south-east quarter of the southwest quarter (SE $\frac{1}{4}$ of SW $\frac{1}{4}$) and the southwest quarter of the southeast quarter (SW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section 10, Township 27 North, Range 52 East, M.D.B. & M., flowing or to flow to, over or through said lands herein above described, and used for domestic purposes; and all houses, stables, corrals, sheds, fences and improvements erected upon and attached to any of the lands herein above described, situate in said Counties of Elko, White Pine and Eureka.

III.

It is further ordered, adjudged and decreed that defendants, Edgar Sadler and Alfred Sadler have judgment quieting title to the hereinafter described property, and that all adverse claims of the plaintiff, and all persons claiming or to claim said premises or any part thereof; through or under said plaintiff, are hereby adjudged and decreed to be invalid and groundless, and that said defendants Edgar Sadler and Alfred Sadler be and they are hereby declared and adjudged to be the true and lawful owners of the land that is hereinafter described in this paragraph and every part and parcel thereof, and that their title thereto is adjudged to be quieted against all claims, demands, or preten-

tions of plaintiff, who is hereby perpetually stopped from setting up any claims thereto, or any part thereof. Said premises are bounded and described as follows, to wit:

All those certain parcels and pieces of land situate, lying and being in the County of Eureka, State of Nevada, particularly described as follows:

The east half of the northeast quarter ($E\frac{1}{4}$ of $NE\frac{1}{4}$) of Section Twelve (12); the northeast quarter ($NE\frac{1}{4}$); the south half ($S\frac{1}{2}$); and the southwest quarter of the northwest quarter ($SW\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Thirteen (13); the east half of the east half ($E\frac{1}{2}$ of $E\frac{1}{2}$) of Section Twenty-three (23); all of Section Twenty-four (24); the north half ($N\frac{1}{2}$) and the north half of the south half ($N\frac{1}{2}$ of $S\frac{1}{2}$) of Section Twenty-five (25); and the east half of the northeast quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$) of Section Twenty-six (26) all in Township Twenty-four (24) North, Range Fifty-two (52) East, Mount Diablo Base and Meridian.

Also, the southwest quarter of the southwest quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$) of Section Seventeen (17); the southwest quarter ($SW\frac{1}{4}$); the west half of southeast quarter ($W\frac{1}{2}$ of $SE\frac{1}{4}$) and the southeast quarter of the southeast quarter ($SE\frac{1}{4}$ of $SE\frac{1}{4}$), of Section Eighteen (18); the west half ($W\frac{1}{2}$) and the West half of the east half ($W\frac{1}{2}$ of $E\frac{1}{2}$) of Section nineteen (19); the southwest quarter of the northwest [22] quarter ($SW\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Twenty-nine (29); and the north half ($N\frac{1}{2}$) of Section Thirty (30); all in the Town-

ship Twenty-four (24) North, Range Fifty-three (53) East, Mount Diablo Base and Meridian.

Containing approximately three thousand one hundred twenty (3120) acres, and constituting what is commonly known as the Diamond Valley Ranch.

Together with all the waters of the Big Shipley Springs flowing, or to flow to, over or through said lands, hereinbefore described, together with all water, water rights, dams, ditches, flumes, water-ways, and privileges used for the irrigation of said lands from said springs, and also with all of the water of those certain springs, situate in the northeast quarter ($NE\frac{1}{4}$) of Section Twenty-six (26), Township Twenty-four (24) North, Range Fifty-two (52) East, Mount Diablo Base and Meridian, flowing or to flow to, over, or through said lands hereinbefore described, together with all the water, water rights, dams, ditches, flumes, water-ways and privileges used for the irrigation of said land from said springs.

IV.

It is further ordered, adjudged and decreed that this action be dismissed as to Eldred G. Winnie, Harvey Carpenter, W. J. Townsend and William Spinner, who have heretofore been made parties hereto.

V.

It is further ordered, adjudged and decreed and found to be a fact that this court that the Diamond

Valley Live Stock and Land Company, a corporation, heretofore existing under and by virtue of the laws of Nevada, and Huntington Valley Stock and Land Company, a corporation, heretofore existing under and by virtue of the laws of Nevada, have ceased the user of their franchises for a period of over thirty years, and have conveyed all of their property, both real and personal, by mesma conveyances, so the Huntington and Diamond Valley Stock and Land Company, the plaintiff herein, and said corporations are no longer in existence. [23]

VI.

It is further ordered, adjudged and decreed that each of the parties to this action pay its or their own costs herein.

Done in Open Court, this 2nd day of March, 1918.

/s/ E. J. L. TABER,
District Judge. [24]

EXHIBIT I

File 12189

Deed (IR Stamps \$15.00) Cancelled

Huntington and Diamond Valley Stock and Land Company to Edgar Sadler and Alfred Sadler.

This Indenture made the 12th day of March, in the year of our Lord one thousand nine hundred

and eighteen, by and between the Huntington and Diamond Valley Stock and Land Company, a Corporation organized and existing under and by virtue of the Laws of the State of California, and doing business in the State of Nevada, the party of the first part, and Edgar Sadler, of the County of Eureka, State of Nevada, and Alfred Sadler, of the County of Washoe, State of Nevada, the parties of the second part,

Witnesseth:

That the said party of the first part did on the 12th of March, 1918, pass the following preamble and resolution: Whereas, under and by virtue of a resolution of this Corporation duly made and entered on the 10th day of September, 1917, said Corporation did duly appoint and constitute Hermann J. Sadler of the County of Elko, State of Nevada, its Attorney-in-Fact under general power of attorney, authorizing the said Hermann J. Sadler, among other powers, to sell and dispose of certain lands situate in Eureka County, in manner and for the consideration which to him should seem for the best interest of said corporation; and

Whereas, the said Hermann J. Sadler, under said power of attorney, did on the 2nd day of March, A. D. 1918, for the consideration of Fifteen Thousand and no/100 Dollars (\$15,000.00), in cash, and other valuable consideration, convey to Edgar Sadler, of the County of Eureka, State of Nevada, and Alfred Sadler, of the County of Washoe, State

of Nevada, the parties of the second part, certain lands and water rights, situate in Eureka County, State of Nevada, and Whereas, said parties of the second part have requested that this Corporation execute a deed of confirmation, confirming in them the titled to lands and water rights in said deed described;

Be it, Therefore Resolved: that the act of Hermann J. Sadler in selling and conveying to the said parties of the second part, the lands and water rights described in the deed of date the 2nd day of March, A. D. 1918, executed by the said Hermann J. Sadler as attorney-in-Fact for this Corporation be confirmed, and that the President and Secretary of this Corporation be and they are hereby authorized and directed to make, execute and deliver to the said Edgar Sadler and Alfred Sadler a deed of confirmation conveying in the name and under the seal of said Corporation the lands and water rights described in said deed of date the 2nd day of March, A. D. 1918, executed by the said Hermann J. Sadler as Attorney-in-Fact for said Corporation;

Now, Therefore, in consideration of the premises and the sum of Fifteen Thousand and No/100 (\$15,000) Dollars, heretofore paid to the said party of the first part by the said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part does by these presents grant, bargain, sell, convey and confirm unto and in said parties of the second part, their heirs

and assigns, all those certain pieces and parcels of
land situate in the County of Eureka, State of
Nevada, and particularly described as follows, to
it:

The East half of the Northeast quarter ($E\frac{1}{2}$ of
 $E\frac{1}{4}$) of Section Twelve (12); the northeast quar-
ter ($NE\frac{1}{4}$); the South half ($S\frac{1}{2}$); and the South-
west quarter of the Northwest quarter ($SW\frac{1}{4}$ of
 $W\frac{1}{4}$) of Section Thirteen (13); the East half of
the West half ($E\frac{1}{2}$ of $E\frac{1}{2}$) of Section Twenty-
three (23); all of Section Twenty-four (24); the
North half ($N\frac{1}{2}$); and the North half of the South
half ($N\frac{1}{2}$ of $S\frac{1}{2}$) of Section Twenty-five (25); and
the East half of the Northeast quarter ($E\frac{1}{2}$ of
 $E\frac{1}{4}$) of Section Twenty-six (26), all in Township
Twenty-four (24) North, Range Fifty-two (52)
East, Mount Diablo Base and Meridian; also the
Southwest quarter of the Southwest quarter ($SW\frac{1}{4}$
of $SW\frac{1}{4}$) of Section Seventeen (17); and South-
west quarter ($SW\frac{1}{4}$); the West half of the South-
east quarter ($W\frac{1}{2}$ of $SE\frac{1}{4}$), and the Southeast
quarter of the Southeast quarter ($SE\frac{1}{4}$ of the
 $E\frac{1}{4}$) of Section Eighteen (18); the west half
($W\frac{1}{2}$); and the West half of the East half ($W\frac{1}{2}$
of $E\frac{1}{2}$) of Section nineteen (19); the Southwest
quarter of the Northwest quarter ($SW\frac{1}{4}$ of $NW\frac{1}{4}$)
of Section twenty-nine (29); and the north half
($N\frac{1}{2}$) of Section Thirty (30); all in Township
Twenty-four (24) North, Range Fifty three (53)
East, Mount Diablo Base and Meridian; contain-
ing approximately Three Thousand one Hundred

Twenty (3120) acres, and constituting what is commonly known as the Diamond Valley Ranch;

Together with all the waters of the Big Shipley Springs flowing, or to flow to, over or through said lands hereinbefore described, together with all water, water rights, dams, ditches, flumes, water-ways and privileges used for the irrigation of said lands from said springs, and also with all of the water of those certain springs situate in the Northeast quarter (NE $\frac{1}{4}$) of Section twenty-six (26) Township Twenty-four (24) North, Range Fifty-two (52) East, Mount Diablo Base and Meridian, flowing or to flow to, over or through said lands hereinbefore described, together with all the water, water rights, dams, ditches, flumes, water-ways and privileges used for the irrigation of said lands from said springs;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold, all and singular the said premises, together with the appurtenances unto the said parties of the second part, and to their heirs and assigns forever.

In Witness Whereof, the said party of the first part has caused these presents to be executed by the President and Secretary thereunto duly author-

ized, and its official seal to be hereto annexed the day and year in this indenture first above written.

[Corporate Seal]

HUNTINGTON AND
DIAMOND VALLEY STOCK
AND LAND COMPANY,
MINNIE C. SADLER,
President,
ELMER WESTLAKE,
Secretary. [26]

State of California,
City and County of San Francisco—ss.

On this twelfth day of March in the year of our Lord one thousand nine hundred and eighteen, personally appeared before me Marguerite S. Bruner, a Notary Public in and for the City and County of San Francisco, State of California, Minnie C. Sadler, known to me to be the President of the Corporation that executed the foregoing instrument and upon oath did depose that she is the officer of said corporation as above designed and that she is acquainted with the seal of said Corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my Official Seal at the City and County of San Francisco, State of California, the day and year in this certificate above written.

[Seal] MARGUERITE S. BRUNER,

Notary Public in and for the City and County of San Francisco, State of California.

Recorded at the request of Cheney, Downer, Price and Hawkins March 23, 1918, at 6 Min. past 11 a.m. in Liber 18 of Deeds, Page 289, Records of Eureka County, Nevada.

EDGAR EATHER,
Recorder.

State of Nevada,
County of Eureka—ss.

I, Edgar Eather, County Recorder and ex officio auditor, in and for said County, do hereby certify that the above and foregoing is a correct and true copy of the original matter thereof, which now remains in my office at Eureka, County and State aforesaid, Deed—Huntington and Diamond Valley Stock and Land Company, to Edgar Sadler and Alfred Sadler.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the Town of this 15th Day of July A. D. 1922.

/s/ EDGAR ETHER,
County Recorder. [27]

EXHIBIT L

A Agreement

Dated March 2, 1918

Reno, Nevada, and Carson City, Nevada

This agreement is made between the following persons as follows:

Edgar Sadler of Eureka Co. Nevada

Alfred Sadler of Washoe Co. Nevada

Bertha Sadler of Ormsby Co. Nevada

Mrs. Louise Sadler of Ormsby Co. Nevada

Clarence Sadler of Washington, D. C. By

Alfred R. Sadler thru the Power of Attorney.

That as soon as possible the mortgage on the Diamond Ranch in Diamond Valley, Eureka County, Nevada be lifted the lawyers fees paid and that the first good chance for the best price possible this aforesaid ranch or property be sold and then that the remainder of the money be divided according to the last will and Testament of Reinhold Sadler, deceased—

Mother desired fifty dollars each month that is by the 10th of each month.

A settlement of the ranch cattle with the same terms of the will.

EDGAR SADLER,

ALFRED SADLER.

[Endorsed]: Filed Sept. 6, 1944. [28]

In the District Court of the United States, in and
for the District of Nevada

No. 371

CLARENCE T. SADLER, on behalf of himself
and all other persons similarly situated who
choose to join as plaintiffs and share the ex-
penses of the litigation,

Plaintiff,

vs.

EDGAR A. SADLER and KATHRYN POWERS
SADLER, as Administratrix of the Estate of
Alfred R. Sadler, Deceased,

Defendants.

SEPARATE APPEARANCE AND NOTICE OF
MOTION BY DEFENDANT, EDGAR A.
SADLER, TO DISMISS COMPLAINT, OR,
IN THE ALTERNATIVE, TO STRIKE A
PORTION THEREOF, AND TO MAKE
MORE DEFINITE

The defendant, Edgar A. Sadler, on his own be-
half only, moves the Court as follows:

I.

To dismiss the action as to this defendant because
the complaint fails to state a claim against this
defendant upon which relief can be granted. [29]

II.

To dismiss the action as to this defendant on the

ground that the Court lacks jurisdiction because the complaint fails to allege the amount actually in controversy exceeds \$3,000 exclusive of interests and costs.

III.

In the alternative—to strike the following: Commencing with the word “Kathryn” in line 1, page 5 of said complaint, to and including the word “Exhibit L,” line 5, said page, on the ground the same is redundant; is immaterial; is impertinent.

IV.

In the alternative of dismissal—that plaintiff be required to make a more definite statement of matters which defendant alleges are not averred with sufficient definiteness to enable the defendant to properly prepare his answer or to prepare for trial, and in that behalf defendant specifies:

(a) Whether or not administration was ever had on the estate of Louisa Sadler, who is alleged to have died intestate on August 6, 1923, and, if so, where such administration was had, whether decree of distribution was made, and administration closed.

(b) Whether, after the death of Reinhold Sadler, and in the life-time of Louisa Sadler, she sold the homestead premises referred to in the Will of Reinhold Sadler, Exhibit “A” annexed by copy to the complaint.

(c) Whether or not administration was ever had on the estate of Bertha Sadler, who is alleged to

have died intestate on April 29, [30] 1921, and, if so, where such administration was had, whether decree of distribution was made, and administration closed.

(d) The copy of complaint of Huntington and Diamond Valley Stock & Land Co. vs. Louisa Sadler, administratrix, et al., mentioned in Paragraph 3 of the complaint herein, and annexed to complaint as Exhibit "B"; the stipulation mentioned in Paragraph 4 of the complaint and annexed thereto by copy as Exhibit "C"; the decree mentioned in said paragraph and annexed to said complaint as Exhibit "D," and the deed, Exhibit "I," annexed to said complaint and mentioned in Paragraph 5 thereof—all of them relate only to realty and none at all purport to include livestock or any personal property. But, in Paragraph 5 of the complaint, it is alleged that the Huntington and Diamond Valley Stock and Land Co. conveyed the said realty, "also all livestock, ranch equipment and other personal property upon said ranch" to this defendant and Alfred R. Sadler. But otherwise no conveyance of any livestock, ranch equipment or personal property is alleged. This defendant is unable to determine whether plaintiff intends to claim said personal property was conveyed by the exhibits, or any thereof, annexed to the complaint, or was conveyed by conveyance not pleaded by copy. [31]

(e) It is alleged (complaint, Paragraph 4) that a stipulation, Exhibit "C," annexed to complaint,

was entered into on February 14, 1918, whereby the legal title to the said premises was to be transferred to Edgar A. Sadler and Alfred R. Sadler, said stipulation being on said February 14, 1918, consented to and signed by all the heirs. It is further alleged (complaint, Paragraph 7) that on March 2, 1918, defendant, Edgar A. Sadler and Alfred R. Sadler, in consideration of the heirs entering into said stipulation, executed the alleged agreement, Exhibit "L" to hold said premises and all livestock and other personal property in trust for the heirs of said Reinhold Sadler, deceased, said heirs having previously, to-wit, on February 18, 1918, consented to a conveyance of said "lands and property," this defendant is unable to determine what consideration, if any, the plaintiff claims to have existed for the making of said trust agreement, Exhibit "L."

On the hearing herein, said defendant will use and refer to said complaint and to this Notice of Motion.

Reno, Nevada, October 16, 1944.

/s/ H. R. COOKE,

Attorney for Defendant,
Edgar A. Sadler. [32]

To Messrs. Springmeyer & Thompson, Attorneys for Plaintiff:

Please Take Notice, that the undersigned will bring the above Motion in for hearing before said

Court on November 6, 1944, at 10:00 a.m., or as soon thereafter as counsel may be heard.

H. R. COOKE,

Attorney for Defendant,

Edgar A. Sadler.

Service, by copy, of the above and foregoing Motion is hereby admitted this 16th day of October, 1944.

SPRINGMEYER &
THOMPSON,

/s/ BRUCE R. THOMPSON.

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 17, 1944. [33]

In the District Court of the United States of America, in and for the District of Nevada

No. 371

CLARENCE T. SADLER, on behalf of himself and all other persons similarly situated who choose to join as plaintiffs and share the expenses of the litigation,

Plaintiff,

vs.

EDGAR A. SADLER and KATHRYN POWERS SADLER, as Administratrix of the Estate of Alfred R. Sadler, Deceased,

Defendants.

DECISION ON MOTION TO DISMISS COMPLAINT, OR TO STRIKE A PORTION THEREOF, AND TO MAKE MORE DEFINITE

The motion of Attorney for Defendant, Edgar A. Sadler, on said Defendant's own behalf only, to dismiss the action as to said Defendant, or, in the alternative, to strike a portion thereof, and to make more definite, having been finally submitted upon briefs filed, and the Court being fully advised in the premises,

It Is Ordered that said motion to dismiss the action as to said Defendant, Edgar A. Sadler, or, in the alternative, to strike a portion thereof, and to make more definite, be, and the same hereby is, as to each respective phase thereof, denied.

It Is Further Ordered that said Defendant have fifteen days from date hereof to file his answer.

Dated: this 17th day of January, 1945.

/s/ FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Jan. 18, 1945. [34]

[Title of District Court and Cause.]

AMENDED COMPLAINT

Comes Now the plaintiff, and files this his Amended Complaint, and for cause of action alleges:

1. Plaintiff is a citizen of the State of California, and defendants are citizens of the State of Nevada. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

2. Reinhold Sadler, at the time of his death on January 29, 1906, was the owner of and in the possession of certain shares of stock in the Huntington Valley Stock and Land Company, a corporation, and in the Diamond Valley Livestock and Land Company, a corporation, and also was the owner of and in the possession of certain real and personal property in the State of Nevada, among which were what is known as the [35] Diamond Valley Ranch in Eureka County, Nevada, and the appurtenances; also livestock, ranch equipment and other personal property upon said ranch.

3. Said Reinhold Sadler left a will, a copy of which is made a part hereof as Exhibit "A." Said will was duly and regularly admitted to probate by the First Judicial District Court of the State of Nevada in and for the County of Ormsby in that certain proceeding entitled "In the matter of the Estate of Reinhold Sadler," docket No. 3718, in said court, and letters of administration of the estate of said decedent were duly and regularly issued to Louisa Sadler, decedent's widow, who duly qualified as administratrix. No decree of distribution was entered in said estate proceedings. During his lifetime five children were born, the issue of said Reinhold Sadler, namely: Wilhelmina Sadler Plummer, referred to as "Minnie" in said will; Edgar A. Sadler, defendant named above, referred to as "Edgar" in said will; Alfred R. Sadler, whose administratrix is named as a defendant herein, referred to as "Alfred" in said will; Bertha L. Sadler, referred to in the first codicil to said will dated June 6, 1885; and Clarence T. Sadler, plaintiff named above, referred to in the second codicil to said will dated June 12, 1891.

4. Said Wilhelmina Sadler Plummer died on September 5, 1903, being then a resident of Carson City, Nevada. Said Bertha L. Sadler died, a single woman without issue, on April 29, 1921, being then a resident of Carson City, Nevada. Plaintiff is informed and believes that said Bertha L. Sadler died intestate and that no proceedings have been instituted for the administration or distribution of her

estate. Said Louisa Sadler died on August 6, 1923, being then a resident [36] of Grass Valley, California, leaving her surviving as heirs at law and next of kin three sons, said Edgar A. Sadler, said Alfred R. Sadler and said Clarence T. Sadler, and one grandson, namely, Edgar L. Plummer, the only child of said Wilhelmina Sadler Plummer, deceased. Plaintiff is informed and believes that said Louisa Sadler died intestate and that no proceedings have been instituted for the administration or distribution of her estate. Said Alfred R. Sadler died on March 5, 1944. On March 27, 1944, letters of administration upon the estate of Alfred R. Sadler were duly and regularly issued to Kathryn Powers Sadler, defendant named above, by the Second Judicial District Court of the State of Nevada in and for the County of Washoe, and ever since said date said Kathryn Powers Sadler has been, and still and now is, the duly appointed, qualified and acting administratrix of the estate of said Alfred R. Sadler, deceased.

5. On or about December 31, 1915, a complaint was filed in the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, by Huntington and Diamond Valley Stock and Land Company, a corporation, against the Huntington Valley Stock and Land Company, a corporation, the Diamond Valley Livestock Company, a corporation, Louisa Sadler, administratrix of the estate of Reinhold Sadler, deceased; Louisa Sadler, Edgar A. Sadler, Bertha L. Sadler, Alfred R. Sadler, Clarence T. Sadler and

others to quiet title to certain lands and the appurtenances, in Eureka County, Nevada, known as the Diamond Valley Ranch. A copy of the said complaint is made a part hereof as Exhibit B.

6. On or about February 14, 1918, a stipulation was entered into between plaintiff and defendants in said action [37] whereby it was stipulated that the legal title to the said lands and property be transferred to Edgar A. Sadler and Alfred R. Sadler upon the payment of \$15,000.00 to plaintiff in said action. A copy of the said stipulation is made a part hereof as Exhibit C. Said stipulation was made and entered into by Louisa Sadler, Edgar A. Sadler, Alfred R. Sadler, Bertha L. Sadler and Clarence T. Sadler in consideration of an agreement between them that said Edgar A. Sadler and Alfred R. Sadler would acquire and hold the legal title to said real property, and would take and hold title to and possession of the livestock, ranch equipment and other personal property situated thereon, in trust for the heirs of Reinhold Sadler, deceased, as named in the terms and provisions of his said will. Thereafter a written memorandum of said trust agreement was executed by said Edgar A. Sadler and Alfred R. Sadler as hereinafter alleged.

7. On the date that said judgment and decree was made and entered, namely on or about March 2, 1918, Herman J. Sadler, as attorney in fact for the Huntington and Diamond Valley Stock and Land Company, a corporation, transferred and conveyed the said property and appurtenances to defendant

Edgar A. Sadler and to Alfred R. Sadler. Thereafter and on or about March 12, 1918, the Huntington and Diamond Valley Stock and Land Company duly transferred and conveyed the said real property and appurtenances to said defendant, Edgar A. Sadler and Alfred R. Sadler, and the president of said company also conveyed the same to defendant Edgar A. Sadler and to Alfred R. Sadler by deed recorded in the office of the county recorder of Eureka County, Nevada, on March 23, 1918, a true and correct copy of which is made a part hereof as Exhibit I.

6. On or about March 2, 1918, and on the same date [38] that the said judgment and decree was made and entered in the said action defendant Edgar A. Sadler and Alfred R. Sadler mortgaged the said property and appurtenances to the Washoe County Bank, Reno, Nevada, for the sum of \$16,500.00, of which the sum of \$1500.00 was paid to the attorneys for defendants and the balance of \$15,000.00 was paid to plaintiff in accordance with the terms and provisions of the said stipulation, Exhibit C.

9. On March 2, 1918, that being the date on which the said decree and on which the said deed was given by Hermann J. Sadler, attorney in fact for the Huntington and Diamond Valley Stock Company conveying the said Diamond Valley Ranch to defendant Edgar A. Sadler and to Alfred R. Sadler, and the date on which the said mortgage was given to the said Washoe County Bank for the said sum

of \$16,500.00, as aforesaid, defendant Edgar A. Sadler and Alfred R. Sadler duly made and entered into a written memorandum of their aforesaid agreement to hold in trust for the heirs of said Reinhold Sadler, deceased, the said real property and appurtenances known as the Diamond Valley Ranch and also all livestock and other personal property upon said property. A true and correct copy of said memorandum is made a part hereof as Exhibit L.

10. Kathryn Powers Sadler, administratrix of the estate of Alfred R. Sadler, deceased, admits that she, under the said agreement, Exhibit L, holds the said Diamond Valley Ranch and the appurtenances, livestock and other personal property in trust as provided in said agreement, Exhibit L. But the defendant, Edgar A. Sadler, since the death of Alfred R. Sadler, on or about March 5, 1944, has repudiated the trust and refuses and neglects to do anything in relation thereto and claims that [39] he is under no obligation to fulfill the promises made by him in said agreement, Exhibit L, and asserts that he holds said property free from any claim by plaintiff or by other persons similarly situated, under the terms and provisions of said agreement, Exhibit L. Said Diamond Valley Ranch and appurtenances, livestock, equipment and other personal property are now of the value of in excess of \$100,000.00; within six months last past defendant Edgar A. Sadler has refused and neglected and still and now refuses and neglects to account to or give a statement to plaintiff or to the other beneficiaries

of the said trust named in said agreement, Exhibit L, or in any way to give a statement of business transactions, receipts, or disbursements by him on account of or through the terms and provisions of said agreement, Exhibit L.

11. By virtue of the facts hereinabove alleged plaintiff is the equitable owner of an undivided twenty-nine per cent (29%) of the aforesaid Diamond Valley Ranch and appurtenances, livestock, equipment and other personal property, title to which and possession of which are held in trust by defendants named above for plaintiff, for the heirs of Alfred R. Sadler, deceased, and for Edgar A. Sadler and Edgar L. Plummer.

12. Said Edgar L. Plummer is a citizen of the State of California, residing in Auburn, California. Said Edgar L. Plummer has not been joined as a party to this action because the jurisdiction of the court entitled above over him as to service of process and venue can be acquired only by his consent or voluntary appearance.

13. References to Exhibits in this Amended Complaint are to the exhibits attached to plaintiff's original Complaint on file in the action entitled above, which are by reference incorporated herein. [40]

Wherefore, plaintiff prays judgment:

1. That the defendant, Edgar A. Sadler, account for all properties, real and personal, received by him from, on account of, or through the said agreement, Exhibit L, and that he give an account of all

his disbursements in connection with the said properties since the execution of the said agreement, Exhibit L.

2. That defendants Edgar A. Sadler and Kathryn Powers Sadler, as administratrix of the estate of Alfred R. Sadler, deceased, be decreed and determined to be trustees for the heirs of Reinhold Sadler, deceased, and their successors in interest, and that it be decreed and adjudged that said defendants hold and possess said real property and its appurtenances, and the said livestock, ranch equipment and other personal property, in trust for said beneficiaries under the terms and provisions of said memorandum of agreement, Exhibit L.

3. For such other, further and additional relief as may be meet and proper in the premises.

SPRINGMEYER &
THOMPSON.

/s/ BRUCE R. THOMPSON,
Attorneys for Plaintiff.

Service by copy admitted this 1st day of February, 1945.

H. R. COOKE,
Attorney for Defendant,
Edgar A. Sadler.

/s/ WM. KEARNEY,
Attorney for Defendant,
Kathryn Powers Sadler.

[Endorsed]: Filed Feb. 2, 1945. [41]

[Title of District Court and Cause.]

AMENDMENT TO AMENDED COMPLAINT

It Hereby Is Stipulated by and between plaintiff named above and defendant Edgar A. Sadler named above that plaintiff's Amended Complaint filed in the action entitled above be, and the same hereby is, amended by adding thereto between lines 15 and 16 on page 4 thereof the following:

"Thereafter and on or about March 2, 1918, a judgment and decree duly was entered in said action ordering that the said property be transferred to defendant Edgar A. Sadler and to Alfred R. Sadler. A copy of said decree is attached hereto as Exhibit D."

It Further Is Stipulated that the allegations of fact made and contained in said addition to said Amended Complaint are admitted by defendant Edgar A. Sadler.

Dated: May 31, 1946.

SPRINGMEYER &
THOMPSON,

Attorneys for Plaintiff.

/s/ H. R. COOKE,

Attorney for Defendant
Edgar A. Sadler.

[Endorsed]: Filed Sept. 17, 1946. [42]

[Title of District Court and Cause.]

SEPARATE APPEARANCE AND NOTICE OF
MOTION BY DEFENDANT EDGAR A.
SADLER TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT

Without prejudice to and reserving all and singular the objections made by this defendant to plaintiff's original Complaint, and to defendant's exceptions to the ruling of the Court denying defendant's Motion to Dismiss said original Complaint, the said defendant Edgar A. Sadler moves the Court as follows:

I.

To dismiss the action as to this defendant because plaintiff's Amended Complaint fails to state a claim against this defendant upon which relief can be granted. [43]

II.

Said Amended Complaint affirmatively shows this court is without jurisdiction, in that:

(a) It affirmatively appears from said Amended Complaint that the property for which decree and accounting are sought herein is the property and proceeds of property belonging to Reinhold Sadler, deceased, and that by said Amended Complaint this court is asked to give effect to the last will of said Reinhold Sadler, deceased, being Exhibit A annexed to plaintiff's original Complaint. It further appears from said Amended Complaint (Paragraph 3) that administration of the estate of said Reinhold Sad-

ler, deceased, has been commenced and is still pending in the First Judicial District Court of Nevada, in and for Ormsby County, and that no decree of distribution has been entered in said probate proceedings.

(b) That without a legal representative of said estate being brought before this court, this court cannot proceed herein for want of a necessary and indispensable party; that for aught that appears said estate was and is insolvent, the allowed claims of creditors greatly exceeding the assets; that the instant proceedings purports to in effect have this court determine not only who are the heirs of said Reinhold Sadler, deceased, but also to distribute the assets of said estate direct to such heirs, in disregard of claims, if any, to creditors of the Estate of said Reinhold Sadler, deceased; that such proceeding is within the exclusive jurisdiction of the said First Judicial District Court of the State of Nevada, in and for Ormsby County in which said probate proceeding is pending.

(c) It appears from said Amended Complaint that Louisa Sadler, surviving wife of Reinhold Sadler, under his will, [44] Exhibit A, was entitled to one-third of all property of said Reinhold Sadler, and that in the event the "homestead" mentioned in said will was sold, said Louisa Sadler was entitled to one-half of the proceeds thereof. It further appears that said Louisa Sadler died intestate (Amended Complaint, Par. 4), but that no proceed-

ings for administration of her estate have been instituted; that by the terms of said will, at least one-third of the property for which accounting and decree are sought herein belongs to the Estate of the said Louisa Sadler, deceased; that no accounting or decree can be made herein as to the heirs of the estate of Louisa Sadler, deceased, until her lawful heirs have been determined and said estate found to be solvent, for which reasons her legal representative is a necessary and indispensable party to this action.

(d) It affirmatively appears from said Amended Complaint (Par. 11 thereof) that Edgar L. Plummer is the owner of an undivided 23/100ths of the alleged trust property referred to in said action; that (Amended Complaint Par. 10) said interest is of the approximate value of \$23,000.00; that the premises considered, said Edgar L. Plummer is a necessary and indispensable party to this action, to the end and for the reason, among others, that this court may have jurisdiction, and also that defendant be not compelled to respond to two or more suits for essentially the one cause of action.

On the hearing hereon, said defendant will use and refer to the files, records and proceedings herein, and to this Notice of Motion.

Dated: February 17, 1945.

H. R. COOKE,

Attorney for Defendant, Edgar A. Sadler, First
National Bank Bldg., Reno. [45]

To : Messrs. Springmeyer & Thompson,
Attorneys for Plaintiff:

Please Take Notice that the undersigned will bring the above Motion on for hearing before said Court on March 5, 1945, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard.

H. R. COOKE,
Attorney for Defendant,
Edgar A. Sadler.

Service, by copy, of the above and foregoing Motion is hereby admitted this 19th day of February, 1945.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 19, 1945. [46]

In the District Court of the United States of America in and for the District of Nevada

No. 371

CLARENCE T. SADLER,

Plaintiff,

vs.

EDGARD A. SADLER and KATHRYN POWERS SADLER, as Administratrix of the Estate of ALFRED R. SADLER, Deceased,

Defendants.

DECISION—SEPARATE APPEARANCE AND NOTICE OF MOTION BY DEFENDANT, EDGAR A. SADLER, TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

The motion of Attorney for Defendant, Edgar A. Sadler, to dismiss the action as to said Defendant, having been finally submitted upon briefs filed, and the Court being fully advised in the premises,

It Is Ordered that said motion to dismiss the action as to said Defendant, Edgar A. Sadler, be, and the same hereby is, denied.

It Is Further Ordered that said Defendant have fifteen days from date hereof to file his Answer.

Dated: This 17th day of October, 1945.

ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed Oct. 18, 1945. [47]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT EDGAR A. SADLER TO PLAINTIFF'S AMENDED COMPLAINT

Comes Now the above named defendant, Edgar A. Sadler, and for his separate answer to plaintiff's Amended Complaint herein, said defendant Edgar A. Sadler admits, denies and alleges:

I.

Answering the allegations of paragraph I of said Amended Complaint, said defendant admits the same.

II.

Answering the allegations of paragraph 2 of said Amended Complaint, said defendant admits the same. [48]

II.

Answering the allegations of Paragraph 2 of said Amended Complaint, said defendant denies that at the time of his death on January 29, 1906, the said Reinhold Sadler was the owner of the shares of stock mentioned or referred to in said Paragraph 2, and denies that said deceased at said time was the owner of the real or personal property mentioned or referred to in said paragraph.

This amendment is in accordance with the order of court dated Sept. 17, 1946.

/s/ AMOS C. DICKEY,
Clerk.

By /s/ O. F. PRATT,
Deputy.

III.

Answering the allegations of paragraph 3 of said Amended Complaint, said defendant admits the same.

IV.

Answering the allegations of paragraph 4 of said Amended Complaint, said defendant avers he is without knowledge or information sufficient to form a belief as to the truth of the averment that at the time of her death to wit, on August 6, 1923, said Louisa Sadler was then a resident of Grass Valley, California; also, as to the averment that Louisa Sadler died intestate and that no proceedings have been instituted for the administration or distribution of her estate; admits the remaining allegations of said paragraph 4.

V.

Answering the allegations of paragraph 5 of said Amended Complaint, said defendant admits the same.

VI.

Answering the allegations of paragraph 6 of said Amended Complaint, said defendant admits the making of the Stipulation of February 14, 1918; denies that thereby it was stipulated that the legal title only, be transferred; denies that said Stipulation was made or entered into by Louisa Sadler, Edgar A. Sadler, Alfred R. Sadler, Bertha L. Sadler and Clarence T. Sadler, or by any of them, in

consideration of the alleged or any agreement between them that said Edgar A. Sadler and Alfred R. Sadler would acquire and hold the legal title to said or any property and/or would take and hold title to and/or possession of the livestock, ranch, equipment and/or other personal property situate thereon in trust for the heirs of Reinhold Sadler, deceased, as named in the terms and provisions of his said Will; denies that thereafter or at all [49] a written memorandum of said alleged trust agreement was executed by said Edgar A. Sadler as alleged, or at all; admits the remaining allegations of said paragraph 6.

VII.

Answering the allegations of paragraph 7 of said Amended Complaint, said defendant admits the same.

VIII.

Answering the allegations of paragraph 8 (erroneously designated "6") of said Amended Complaint, said defendant, Edgar A. Sadler, admits the same.

IX.

Answering the allegations of paragraph 9 of said Amended Complaint, said defendant, Edgar A. Sadler denies all and singular the allegations of said paragraph 9.

X.

Answering the allegations of paragraph 10 of said

Amended Complaint, said defendant, Edgar A. Sadler, avers he is without knowledge or information sufficient to form a belief as to the truth of the averment that Kathryn Powers, administratrix of the estate of Alfred R. Sadler, deceased, admits that he, under said alleged agreement Exhibit L holds all alleged or any property in trust as provided in said Exhibit L or otherwise or at all. Said defendant, Edgar A. Sadler, admits that he has refused and continues to refuse to do anything in relation to said alleged trust; admits that he claims he is under no obligation to fulfill the promises alleged to have been made by him in said alleged agreement Exhibit L; admits that he asserts that he holds said property free from any claim of plaintiff, or by other persons similarly situated, under the terms of said alleged agreement Exhibit L; denies that the said Diamond Valley Ranch and appurtenances, [50] livestock, equipment and other personal property are now of a value in excess of \$100,000, or of any value in excess of \$25,000, or thereabouts; admits that this defendant has refused and now refuses to account or to give a statement of the business, receipts and disbursements, to plaintiff or to the other alleged beneficiaries of the alleged trust agreement Exhibit L.

XI.

Answering the allegations of paragraph 11 of said Amended Complaint, this defendant denies that by virtue of the facts alleged, or by virtue of any matter or thing whatsoever, the said plaintiff

is the equitable owner, or owner at all, of an undivided 29%, or any per cent, of the property or any thereof, mentioned in said paragraph 11 of the Amended Complaint; denies title or possession of the property referred to are held in trust by this defendant as a trustee with said Alfred R. Sadler, or at all, for plaintiff or for the heirs of Alfred R. Sadler, deceased, or for Edgar A. Sadler and/or Edgar L. Plummer or any of them.

XII.

Answering the allegations of paragraph 12 of said Amended Complaint, this defendant admits that said Edgar L. Plummer at the time of the commencement of this action was a citizen of the State of California, residing in Auburn in said state; that as to the remaining allegations of said paragraph 12 this defendant avers he is without knowledge or information sufficient to form a belief as to the truth thereof.

XIII.

Answering the allegations of paragraph 13 of said Amended Complaint, this defendant admits the same. [51]

For a first affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler, alleges:

I.

The said plaintiff should not be permitted to have or maintain his alleged cause of action herein for

in that four years and more prior to the commencement of this action, this defendant denied, disclaimed and repudiated to said plaintiff the alleged trust and trust relationship set forth in said Amended Complaint including any trust or trust relationship of any kind or character whatsoever involving or affecting the property described or referred to in said Complaint, or any part thereof; that said denial, disclaimer and repudiation was made to said plaintiff by this defendant about the year 1924 or 1925 and also about November 1938, as well as at divers other times both before and subsequent to said last mentioned time; that the substance and effect thereof were that said plaintiff had no interest whatever, by trust or otherwise, in said property or any thereof.

II.

In virtue of the facts above stated, said defendant alleges that plaintiff's cause of action, if any he ever had, is barred by the provisions of the statute of limitations of the State of Nevada and particularly Nevada Comp. Laws 1929 N.C.L. Sec. 8527 and subsection 4 of the "within three years" clause of Sec. 8524.

For a second affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler alleges: [52]

I.

That said plaintiff should not be permitted to have or maintain his alleged cause of action herein

for in that any and all rights, claims, demands or causes of action if any, which plaintiff may at any time have had in respect of the property described in said Amended Complaint, are barred by the laches of plaintiff in failing to seasonably assert his alleged rights and to commence his action in support of which said defendant avers and shows to the Court the following:

(a) That shortly following March 2, 1918, this defendant became personally liable for the sum of \$16,500, necessary for use in purchasing the real property described in the Complaint and for discharging certain indebtedness against said ranch land and that to secure the payment of said \$16,500 this defendant in addition to other property, mortgaged 200 head of cattle, the personal property of this defendant; that thereafter, all of said indebtedness was subsequently paid by this defendant in large part, if not wholly, from moneys acquired by this defendant from one or more life insurance policies taken out by defendant upon his life and substantially paid for by him prior to March 2, 1918.

(b) That on March 2, 1918, the number of cattle carrying the *H* Reinhold Sadler or "ranch brand," on or pertaining to the ranch described in said Amended Complaint did not exceed 50 head and this defendant is informed and believes and he so alleges, the actual number was about 20 head; and at said time this defendant had 200 head more or less of cattle carrying the *S* interlocking quarter circle Edgar A. Sadler brand [53] said cattle

being then and there the property of this defendant; that said \mathcal{H} cattle then and thereafter ranged with said cattle belonging to this defendant and the same with its progeny were run in the same manner as said \mathfrak{S} cattle, the progeny being branded \mathfrak{S} .

(c) That on or about the year 1930, Ethel Sadler, the wife of this defendant having inherited \$2,000, from her mother's estate, invested the same in the purchase of about 40 or 50 head of cows and calves which were thereupon placed on said ranch and run with the aforesaid cattle, or the progeny thereof and branded with the same brand, to wit, \mathfrak{S} and so continued from thence hitherto. At about the same time this defendant mortgaged his said individually owned cattle and with the proceeds, or a portion thereof bought about 50 cows and calves.

(d) That prior to the year 1930 Reinhold Sadler, an adult son of this defendant, acquired and separately owned about 40 or 50 head of cows and calves, and in said year he acquired and became the separate owner of 50 cows and calves, all of the aforesaid cattle being branded E , the registered brand of said Reinhold Sadler; that thereupon and without said Reinhold Sadler having, as this defendant is informed and believes and so alleges, any knowledge or notice of the alleged claims of the plaintiff, said

E cattle were pursuant to agreement between this defendant and said Reinhold Sadler, run together with the \mathfrak{S} and \mathcal{H} cattle, the proceeds and profits were pooled and reinvested. [54]

(e) That between 1933 and 1937, from time to time, the said Reinhold Sadler under the same conditions above stated, put into the said ranch and cattle business the additional sum of \$3,000 most, if not all of which, was used in construction of a dwelling on said ranch property. That Ruth Sadler, wife of said Reinhold Sadler, in like manner put \$5,000, moneys personally earned by her as a school teacher, into said ranch and cattle business for the purpose of being used and which were actually used in betterment of said property.

(f) That in 1937 Floyd Sadler, an adult son of this defendant, pursuant to an agreement with this defendant and the said Reinhold Sadler, and, as defendant is informed and believes and so alleges, without any notice or knowledge of the alleged claims of plaintiff, put 42 head of cattle into said ranch and cattle business, for which he obtained a one-fifth interest, which was later increased to an undivided one-third interest in the whole of said business; that the cattle so put in were branded 5, the registered brand of said Floyd Sadler; that thereafter the said Floyd Sadler put in about \$2,000 cash to help keep said ranch and business going; that from 1937 to 1940 said Floyd received no share of the profits or proceeds for the interest owned by him to have amounted to about \$1,500 per year.

(g) That long prior to March 2, 1918 this defendant had obtained three life insurance policies: one issued by New York Life Insurance Co., for \$3,000,—cashed by this defendant in 1920; one policy

by Kansas City Life Insurance Co. for \$1,800, or over —cashed by this defendant in 1922; one policy [55] issued by New York Life Insurance Co. for \$3,000, and cashed by this defendant in 1933; that the dwelling house on said ranch burned down in 1922 and a new dwelling house was built, as defendant verily believes and so avers, with the proceeds of the \$1,800 policy above mentioned; that the remainder of said moneys, the proceeds of the insurance policies aforesaid, was expended in the general operation and upkeep of said ranch and cattle business.

(h) That in the year 1929 this defendant secured with his own funds for his own use in said work and business, a lease on the so-called Eccles Ranch with buildings thereon, said property being of the value of about \$8,000; that the annual rental was and is \$400 per year; that said leased property produced about 200 tons of hay per year and contains valuable water rights usable and used in connection with the so-called home ranch, described in plaintiff's Amended Complaint; that divers buildings on said leased land have been torn down, but under the terms of said lease, must be replaced at the end of said lease.

(i) That the total number of cattle on said ranch at the time of this action was commenced, was 650 head owned, and claimed, an individual one-third by this defendant and his wife, Ethel Sadler, an undivided one-third by the said Reinhold Sadler and his said wife; and the remaining undivided one-third by the said Floyd Sadler; that in 1918 the

total value of said ranch and the 20 to 50 head of ~~JC~~ cattle then being thereon, was about \$16,000; that since March 2, 1918, by the work and labor of this defendant and his partners, the said [56] Reinhold and Floyd Sadler and between 1927 and 1939, about 50 acres of sagebrush ground have been brought into cultivation, plowed and put into clover and alfalfa.

(j) On said ranch at the time of the commencement of this action, was a quantity of new and valuable farm machinery viz. a truck, tractor, drill, power machine costing about \$4,000; other machinery worth from \$1,000 to \$1,500; also mowing machines, disc harrows and the like, all of the above being purchased with moneys the proceeds of cattle sold from time to time, the property as aforesaid of this defendant, the said Ethel, Reinhold, Ruth and Floyd Sadler.

(k) That at divers time since March 2, 1918, and prior to the commencement of this suit, in order to raise needed money to carry on as well as to buy more cattle, this defendant singly, and also with his said co-partners later, mortgaged all of the livestock at the time on said ranch; that it is now in effect impossible to determine what portion if any of the cattle so acquired belonged to plaintiff and what portion belonged to this defendant, and what portion belongs to the said Reinhold, Floyd, Ethel and Ruth Sadler.

(l) That at various times since 1918 this defendant and his said co-partners, Reinhold and Floyd Sadler, have drawn from proceeds of said

business as profits thereof, sums of money aggregating many thousands of dollars; that no records or books of account were kept by defendant on the said co-partnership as to credits or debits inter se and on account of the lapse of time and defendant being lulled into a sense of security, the [57] defendant avers it is impossible to determine equitably what portion if any, of said property belongs to plaintiff and what portion belongs to defendant and his said co-partners; that no accounting was ever made by this defendant nor was any accounting as such ever demanded by plaintiff except by the commencement of this action; that plaintiff had notice and knowledge at the time of all and singular the matters hereinbefore alleged.

(m) That of the beneficiaries of the trust alleged by plaintiff, the following have died since March 2, 1918, viz, Mrs. Louisa Sadler died August 6, 1923, without administration on her estate; Bertha L. Sadler died April 29, 1921, without administration on her estate; Alfred R. Sadler died March 5, 1944.

(n) That on or about March 5, 1944, the said Alfred R. Sadler died at Reno, Nevada; that plaintiff commenced this action on September 16, 1944; that had this action been timely commenced, this defendant could and would have had the benefit of the testimony of the said Alfred R. Sadler; that if said Alfred R. Sadler were alive he could and would testify to the substance and effect that since March 2, 1918, the plaintiff never had anything to

do with the ranch and cattle and no interest therein; that he, Alfred R. Sadler, had a "moral" interest in the real property which he offered to sell to this defendant for \$3,000, but claimed no interest in the livestock or other personal property on said ranch; that as this defendant is informed and believes and so charges the fact to be, plaintiff was, prior to the death of said Alfred R. Sadler, [58] informed of the fact that said Alfred R. Sadler could and would so testify; that there is no person available to the knowledge of this defendant who can give the same or similar testimony.

For a third affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler alleges:

I.

That the estate of Louisa Sadler, deceased, one of the beneficiaries of the alleged trust by its legal representative, the estate of Bertha Sadler, deceased, one of the beneficiaries of said alleged trust by its legal representative, the estate of Wilhelmina Sadler, deceased, one of the beneficiaries of said alleged trust by its legal representative, should be made parties to the suit; that if the plaintiff ever had or now has a cause of action against this defendant in respect of the matters alleged in his Amended Complaint, then this defendant avers that the heirs of each of said deceased have a joint and non-severable interest in the cause of action asserted by plaintiff and the legal representative of said

estates are indispensable parties; that complete relief cannot be accorded between those already parties without the joinder of the absent persons above referred to; that no accounting or judgment made herein between the parties now before the court, would be binding upon the absent persons or any of them, in consequence whereof this defendant might be subjected to three or more further actions, all including the instant suit, involving essentially but one subject matter and one cause of action. [59]

For a fourth affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler alleges:

I.

That if said alleged agreement of March 2, 1918, Exhibit L, annexed to plaintiff's Amended Complaint and the alleged agreement set forth in paragraph 6 of said Amended Complaint page 4, lines 7-13 were, or either of them was, executed on the part of this defendant, the same at all times have been and now are and each of them is null and void as to this defendant for in that said alleged agreements were and each of them was and so remain without any consideration.

For a fifth affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler alleges:

I.

That if the alleged agreement set forth in plain-

tiff's Amended Complaint paragraph 6, page 4, lines 7-13 was ever made, the same nor any part thereof, was not in writing, subscribed by this defendant or by any of the alleged parties thereto, or by his or their lawful agent thereunto authorized in writing, and the same was and is null and void in virtue of the provisions of the Statute of Frauds of the State of Nevada, N.C.L., Sec. 1527.

For a sixth affirmative defense to plaintiff's Amended Complaint and cause of action, said defendant, Edgar A. Sadler alleges: [60]

I.

That if the said alleged agreement of March 2, 1918, being Exhibit L annexed to plaintiff's Complaint and the alleged agreement of February 14, 1918, as set forth in plaintiff's Amended Complaint, paragraph 4, section 6, lines 7-13, or either of them, were ever made, the same are and each of them is null and void because violative of the Rule against Perpetuities in that under neither of said alleged agreements must any estate vest, if at all, not later than twenty-one years after some life in being at the time of the creation of the alleged interest and that said alleged agreements are and each of them is void for remoteness.

Wherefore this defendant prays that plaintiff take nothing by his said Amended Complaint and

action herein; that the same may be dismissed and that this defendant may go hence with his costs.

H. R. COOKE,
Attorney for Defendant
Edgar A. Sadler.

Service of foregoing separate Answer of defendant Edgar A. Sadler, by copy, admitted this 16th day of November, 1945, and within the time as extended therefore by oral stipulation.

Dated: November 16, 1945.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 17, 1945. [61]

[Title of District Court and Cause.]

NOTICE OF MOTION BY DEFENDANT
EDGAR A. SADLER TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AND,
SUBJECT THERETO, FOR SUMMARY JUDGMENT

To: Plaintiff above named, and
Messrs. Springmeyer & Thompson,
His attorneys:

Take Notice that on the day and hour specified in the hereunto annexed order of the Court, in the above-entitled Court in the Court Room thereof in

the U. S. Post Office Building, at Reno, Nevada, the said defendant will move said court for an order or orders as follows:

I.

That plaintiff's Amended Complaint herein be dismissed, for in that: [62]

(a) Lack of jurisdiction by the court over the subject matter;

(b) Failure of plaintiff's Amended Complaint to state a claim upon which relief can be granted.

II.

Subject to the foregoing, said defendant will move the said court at the same time and place, for a summary judgment, upon the ground that it affirmatively appears from said plaintiff's Amended Complaint that plaintiff is entitled to no relief and that said defendant is entitled to summary judgment that the action as to him be dismissed with prejudice.

On the hearing hereon said defendant will use and refer to plaintiff's Amended Complaint and to the Exhibits annexed to plaintiff's original Complaint and referred to in said Amended Complaint, and to such other documents or affidavits as may be presented to the court on said hearing.

Dated: July 15, 1946.

H. R. COOKE,

JOHN D. FURRH, JR.,

Attorneys for Defendant.

On application of defendant Edgar A. Sadler,

It Is Ordered that the time of hearing the foregoing Motion is hereby set for Sept. 11th, 1946, at the hour of 2 o'clock p.m., at the Court Room of the U. S. District Court, U. S. Post Office Building, Reno, Nevada; and it is

Further Ordered that a copy of the foregoing be served upon plaintiff at least 30 days before said hearing date.

Dated: July 15, 1946.

ROGER T. FOLEY,
District Judge.

Service, by copy, of the foregoing Notice of Motion, with Order attached, admitted this 1st day of Aug., 1946.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 2, 1946. [64]

[Title of District Court and Cause.]

MINUTES OF COURT, SEPTEMBER 17, 1946

This being the time heretofore fixed for the hearing on Motion for Order permitting the defendant Edgar A. Sadler to amend his Answer; and Motion of defendant Edgar A. Sadler to dismiss Amended Complaint, and subject thereto, for a Summary Judgment, and the same coming on regularly this day, Bruce R. Thompson, Esq., appears for and on behalf of the plaintiff, and Messrs. H. R. Cooke and John D. Furrh, Jr., appears for the defendant Edgar A. Sadler. The Motion to Amend Answer is taken up first. Mr. Cooke offers in evidence, in connection with the Motion to Amend Answer, a certified copy of a deed, dated May 25, 1885, between Reinhold Sadler and Louisa Sadler, his wife, and Diamond Valley Live Stock and Land Company, which is admitted and marked Defendant's Exhibit No. 1. Following arguments by counsel for the respective parties, the Motion is submitted. Thereupon It Is Ordered that the Motion to Amend Answer of defendant Edgar A. Sadler be, and the same hereby is, granted. The Motion to Dismiss Amended Complaint, and subject thereto, for a Summary Judgment is next taken up. Mr. Cooke waives his Motion for a Summary Judgment and argues on the Motion to Dismiss. Mr. Thompson replies and the Motion is submitted. Thereupon It Is Ordered that the Motion to Dismiss be, and the same hereby is, denied. [65]

In the District Court of the United States of America, in and for the District of Nevada

No. 371

CLARENCE T. SADLER,

Plaintiff,

vs.

EDGAR A. SADLER and KATHRYN POWERS
SADLER, as Administratrix of the Estate of
Alfred R. Sadler, deceased,

Defendants.

OPINION AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kathryn Powers Sadler, as Administratrix of the Estate of Alfred R. Sadler, deceased, was dismissed as a party to this action pursuant to the suggestion made in the Decision of March 29, 1946, on the Motion of defendant Edgar A. Sadler to realign parties.

The real property with which we are concerned in this action has been referred to by the parties as the Diamond Valley Ranch.

The connection of plaintiff Clarence T. Sadler and Edgar A. Sadler with the title to Diamond Valley Ranch springs from their relation as heirs of Reinhold Sadler, deceased. Defendant Edgar A. Sadler and his deceased brother, Alfred R. Sadler, acquired legal title to Diamond Valley Ranch by

[Title of District Court and Cause.]

MINUTES OF COURT, SEPTEMBER 17, 1946

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In the District Court of the United States of America, in and for the District of Nevada

No. 371

CLARENCE T. SADLER,

Plaintiff,

vs.

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SADLER, as Administratrix of the Estate of
Alfred R. Sadler, deceased,

Defendants.

**OPINION AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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The real property with which we are concerned in this action has been referred to by the parties as the Diamond Valley Ranch.

The connection of plaintiff Clarence T. Sadler and Edgar A. Sadler with the title to Diamond Valley Ranch springs from their relation as heirs of Reinhold Sadler, deceased. Defendant Edgar A. Sadler and his deceased brother, Alfred R. Sadler, acquired legal title to Diamond Valley Ranch by

virtue, as counsel for plaintiff points out, of the cumulation on March 2, 1918, of a series of events. On February 14, 1918, the parties to the quiet title action referred to in the complaint [147] entered into a stipulation providing among other things that judgment may be entered in the said action as follows:

“1. That it be adjudged and decree that the defendants, Edgar Sadler and Alfred Sadler are the owners and entitled to the possession of all the property described in plaintiff’s complaint, which is situate in the County of Eureka, State of Nevada, and known as the Diamond Valley Ranch, a more particular description of said property to be inserted in said decree, their title thereto quieted, and that none of the other parties to this action have any right, title or estate in said property, or any part thereof.

.....*.....*.....*.....*.....*.....*

“4. That the money to be paid by the said Edgar Sadler and Alfred Sadler to the plaintiff as a consideration for this settlement and decree, shall be solely the obligation of said Edgar Sadler and Alfred Sadler, and that none of the parties hereto shall be in any wise personally liable therefor.

..........*.....*.....*.....*

“6. That judgment be entered in accordance with this stipulation, and that our attorneys in said action and said Edgar Sadler and said

Alfred Sadler are authorized to take such proceedings and execute any and all papers necessary and proper to carry this stipulation into full force and effect."

It will be noted that said stipulation was executed by the following defendants in said quiet title action: Clarence T. Sadler by Alfred R. Sadler, his attorney-in-fact; Louisa Sadler, as Administratrix of the Estate of Reinhold Sadler, deceased; Louisa Sadler; Bertha L. Sadler; Edgar Sadler; and Alfred R. Sadler. This stipulation was filed in said quiet title action March 2, 1918.

On March 2, 1918, a decree in said quiet title action was duly given and made pursuant to and in accordance with the above stipulation, the said decree among other things providing:

"It is further ordered, adjudged and decreed that defendants, Edgar Sadler and Alfred Sadler have judgment quieting title to the herein-after described property, and that all adverse claims of the plaintiff, and all persons claiming or to claim said premises or any part thereof; through or under said plaintiff, are hereby adjudged and decreed to be invalid and groundless, and that said defendants Edgar Sadler and Alfred Sadler be and they are hereby declared and adjudged to be the true and lawful owners of the land that is hereinafter described in this paragraph and every part and parcel thereof, and that their title thereto is adjudged

to be quieted against all claims, demands, or pretensions of plaintiff, who is hereby perpetually stopped from setting up any claims thereto, or any part thereof. Said premises are bounded and described as follows, to-wit: (Description.) (Then the following language appears in the decree:)

“Containing approximately three thousand one hundred twenty (3120) acres, and constituting what is commonly known as the Diamond Valley Ranch. * * *” [148]

On March 2, 1918, Hermann J. Sadler, as attorney-in-fact for the Huntington and Diamond Valley Stock and Land Company, plaintiff in said quiet title action, by deed conveyed the Diamond Valley Ranch to Edgar and Alfred Sadler. On March 2, 1918, Alfred and Edgar Sadler executed a mortgage on the Diamond Valley Ranch to the Washoe County Bank as security for a loan of \$16,500.00. On March 2, 1918, Alfred Sadler and Edgar Sadler executed a chattel mortgage on 250 head of cattle then on said ranch to the Washoe County Bank as additional security for the same loan of \$16,500.00. The said sum of \$16,500.00 so borrowed was disbursed as follows: \$15,000.00 to the Huntington and Diamond Valley Stock and Land Company and \$1500.00 to pay the fees of defendants' attorneys in the quiet title action. On the same day, March 2, 1918,

defendant Edgar Sadler and his brother Alfred Sadler made and signed the following document:

A Agreement

Dated March 2, 1918

Reno, Nevada, and Carson City, Nevada

"This agreement is made between the following persons as follows:

"Edgar Sadler of Eureka Co. Nevada

"Alfred Sadler of Washoe Co. Nevada

"Bertha Sadler of Ormsby Co. Nevada

"Mrs. Louise (Louisa) Sadler of Ormsby Co. Nevada

"Clarence Sadler of Washington, D. C. By Alfred R. Sadler thru the Power of Attorney.

"That as soon as possible the mortgage on the Diamond Ranch in Diamond Valley, Eureka County, Nevada be lifted the lawyers fees paid and that the first good chance for the best price possible this aforesaid ranch or property be sold and then that the remainder of the money be divided according to the last will and Testament of Reinhold Sadler, deceased—

"Mother desired fifty dollars each month that is by the 10th of each month.

"A settlement of the ranch cattle with the same terms of the will.

EDGAR SADLER,
ALFRED SADLER."

The will referred to was obviously the last will and testament of Reinhold Sadler, deceased, annexed as an exhibit to the original complaint herein. Exhibit 8 demonstrates that by [149] reason of the transactions of March 2, 1918, Alfred R. Sadler and Edgar A. Sadler did not acquire both the legal and equitable title to Diamond Valley Ranch; they did not become the absolute owners thereof. The above agreement is a declaration of trust. *Sime v. Howard*, 4 Nev. 473; *Baker v. Baker*, 31 Pac. 354 (Cal.).

The events of March 2, 1918, the stipulation, the decree, the deed and the agreement, Exhibit 8, did not just happen. They resulted from an understanding and agreement between Edgar Sadler, Alfred Sadler, Bertha Sadler and Mrs. Louisa Sadler, and the purpose of such events and instruments and agreements is declared and shown from the document called "A Agreement" of March 2, 1918, Exhibit 8. Edgar Sadler and Alfred Sadler acquired the legal title to Diamond Valley Ranch in trust for themselves and for those entitled to take as heirs under the will of Reinhold Sadler, deceased. By virtue of the transactions, events and instruments of March 2, 1918, Edgar A. Sadler and Alfred R. Sadler became co-trustees of an express trust. 65 C. J. 262, Sec. 42. "A cestui que trust of an express trust has no right of action until the trust is denied or some act is done by the trustee inconsistent with the trust; and until then the statute of limitations does not begin to run." *White v. Sheldon*, 4 Nev. 280. Here we find that there

was no open and unequivocal breach or repudiation of the trust to the knowledge of the beneficiary until March 5, 1944, after the death of Alfred Sadler.

Counsel for defendant, p. 49 of their Brief, claim that the alleged "Trust Agreement" of March 2, 1918, offends the rule against perpetuities. The contention is rejected. *In re Heberle's Estate*, 102 Pac. 935 (Cal.).

The Court may grant plaintiff any relief consistent with the case made by the Complaint and Answer and embraced within the issue. Sec. 8797, Nevada Compiled Laws. The prayer of the complaint here includes a prayer for such other, further and additional relief as may be meet and proper in the premises. Upon a prayer for general relief the Court will give the relief [150] to which the plaintiff is entitled under the principles of equity. *Hammett v. Ruby Lee Minar*, 53 F. 2d 144, 145. The Court should require the enforcement of this trust. "Equity delights to do justice and not by halves."

Exhibit "L" attached to the original Complaint (Exhibit 8 in evidence) contains a peremptory power of sale and in view of the time which has elapsed since March 2, 1918, the date of the execution of Exhibit "L," six months from the date of the filing and entry of the decree made pursuant to the Findings and Conclusions of Law herein and hereafter contained, should be sufficient additional time to allow the trustee to comply with his duty

under the trust. The decree to be submitted here should contain a direction to sell the real estate within six months from the date of filing said decree. And, within said time, six months from this date, the defendant should account for the cattle on the ranch March 2, 1918, and for all properties, real and personal, received by him from, on account of, or through said Agreement, Exhibit "L"; and that he give an account of all his disbursements in connection with the said properties since the execution of said Agreement within said time. *Metsker v. Metsker*, 151 N. E. 539 (Ill.); *In re Lichtenberg's Estate*, 185 N. Y. Supp. 913. The said accounting to be made in the light of the principle, "He who seeks equity must do equity."

The Court, having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted for decision, Now Finds the Facts and States Conclusions of Law as Follows:

Findings of Fact

1. That Paragraph I of the Amended Complaint containing jurisdictional allegations is admitted by the defendant Edgar A. Sadler.
2. That Reinhold Sadler at the time of his death on January 29, 1906, was the owner of and in the possession of certain shares of stock in the Huntington Valley Stock and Land Company, a corporation. [151]

3. That Reinhold Sadler left a will, copy of which is made a part hereof as Exhibit "A" (attached to original Complaint). Said will was duly and regularly admitted to probate by the First Judicial District Court of the State of Nevada, in and for the County of Ormsby, in that certain proceeding entitled "In the Matter of the Estate of Reinhold Sadler," Docket No. 3718, in said Court, and letters of administration of the estate of said decedent were duly and regularly issued to Louisa Sadler, decedent's widow, who duly qualified as administratrix. No decree of distribution was entered in said District Court proceedings. During his lifetime five children were born, the issue of said Reinhold Sadler, namely, Wilhelmina Sadler Plummer referred to as "Minnie" in said will; Edgar A. Sadler, defendant named above, referred to as "Edgar" in said will; Alfred R. Sadler, whose administratrix is named as a defendant herein (eliminated as a party defendant by dismissal made pursuant to order of Court filed March 29, 1946, on motion for realignment of parties); Bertha L. Sadler referred to in the first codicil of said will dated June 6, 1885; and Clarence T. Sadler, plaintiff named above, referred to in the second codicil of said will dated June 12, 1891.

4. That Wilhelmina Sadler Plummer died on September 5, 1903; that Bertha L. Sadler died, a single woman without issue, on April 29, 1921, intestate, and that no proceeding have been instituted for the administration or distribution of her estate; that Louisa Sadler died August 6, 1923, leaving

surviving as heirs at law and next of kin three sons, said Edgar A. Sadler, said Alfred R. Sadler, and said Clarence T. Sadler, and one grandson, namely, Edgar L. Plummer, the only child of said Wilhelmina Sadler, deceased; that no evidence was introduced from which it may be determined whether said Louisa Sadler died intestate; that no proceedings have been instituted for the administration or distribution of the estate of Louisa Sadler, deceased; that said Alfred R. Sadler died on March 5, 1944.

5. That on or about December 31, 1915, a complaint was filed [152] in the District Court of the Fourth Judicial District of the State of Nevada at Elko, Nevada, by Huntington and Diamond Valley Stock and Land Company, a corporation, against the Huntington Valley Stock and Land Company, a corporation, the Diamond Valley Livestock and Land Company, a corporation, Louisa Sadler, Administratrix of the Estate of Reinhold Sadler, deceased, Louisa Sadler, Edgar A. Sadler, Bertha L. Sadler, Alfred R. Sadler, Clarence T. Sadler, and others, to quiet title to certain lands and the appurtenances in Eureka County, Nevada, known as the Diamond Valley Ranch. A copy of the said complaint is made a part hereof as Exhibit "B" (attached to original Complaint).

6. That on or about February 14, 1918, a stipulation was entered into between plaintiff and defendants in said action whereby it was stipulated that the legal title to the said lands and property

be transferred to Edgar A. Sadler and Alfred R. Sadler upon the payment of \$15,000.00 to plaintiff in said action. A copy of the said stipulation is made a part hereof as Exhibit "C" (attached to original Complaint).

That thereafter and on March 2, 1918, a judgment and decree was entered in said action pursuant to said stipulation whereby it was adjudged that defendant Edgar Sadler and said Alfred Sadler were the true and lawful owners of Diamond Valley Ranch.

That said stipulation was made and entered into by Louisa Sadler, Edgar A. Sadler, Alfred R. Sadler, Bertha L. Sadler, Clarence T. Sadler pursuant to an agreement between them that said Edgar A. Sadler and Alfred R. Sadler would acquire and hold the legal title to said real property, and would take and hold title to and possession of the livestock, ranch equipment and other personal property situated thereon in trust for the heirs of Reinhold Sadler, deceased, as named in the terms and provisions of the said will,

7. That on March 2, 1918, Hermann J. Sadler, as attorney-in-fact for the Huntington and Diamond Valley Stock and Land Company, a corporation, transferred and conveyed the said property and [153] appurtenances to defendant Edgar A. Sadler and to Alfred R. Sadler; that thereafter and on the 12th day of March, 1918, the Huntington and Diamond Valley Stock and Land Company duly

transferred and conveyed the said real property and appurtenances to said defendant Edgar A. Sadler and Alfred R. Sadler, and the president of said company also conveyed the same to defendant Edgar A. Sadler and to Alfred R. Sadler by deed recorded in the office of the County Recorder of Eureka County, Nevada, on March 23, 1918, a true correct copy of which is attached to the original Complaint as Exhibit "I."

8. That on or about March 2, 1918, and on the same date that the said judgment and decree was made and entered in the said action quieting title, defendant Edgar A. Sadler and Alfred R. Sadler mortgaged the said Diamond Valley Ranch and appurtenances to the Washoe County Bank, Reno, Nevada, for the sum of \$16,500.00, of which the sum of \$1500.00 was paid to the attorneys for the defendants in said quiet title action and the balance, \$15,000.00, was paid to plaintiff in accordance with the terms and provisions of the stipulation (Exhibit "C" attached to original Complaint).

That on March 2, 1918, Alfred Sadler and Edgar Sadler executed a chattel mortgage on the 250 head of cattle on the Diamond Valley Ranch to the Washoe County Bank as additional security for the said loan of \$16,500.00.

9. That on March 2, 1918, that being the date on which the said decree and on which the said deed was given by Hermann J. Sadler, attorney-in-fact for the Huntington and Diamond Valley Stock and Land Company conveying the said Diamond Valley

Ranch to defendant Edgar A. Sadler and to Alfred R. Sadler, and the date on which the said mortgage was given to the said Washoe County Bank for the said sum of \$16,500.00 as aforesaid, defendant Edgar A. Sadler and Alfred R. Sadler duly made and entered into a written memorandum of their aforesaid agreement to hold in trust for the heirs of said Reinhold Sadler, deceased, the real property and appurtenances known as the Diamond Valley Ranch and also all livestock and other personal property upon said ranch (copy [154] of said memorandum attached to original Complaint as Exhibit "L").

10. That the allegations of Paragraph 10 of the Amended Complaint concerning admissions made by Kathryn Powers Sadler are not considered as matters at issue in this case for the reason that said Kathryn Powers Sadler has been dismissed as a party defendant.

That defendant Edgar A. Sadler, since the death of Alfred R. Sadler on or about March 5, 1944, has repudiated the said trust and refuses and neglects to do anything in relation thereto and claims that he is under no obligation to fulfill the promises made by him in said Agreement Exhibit "L" (Exhibit 8 in evidence), and asserts that he holds said property free from any claim by plaintiff or by any other persons similarly situated under the terms and provisions of the said Agreement Exhibit "L"; that within six months prior to September 16, 1944, the date of the filing of the original Complaint herein, defendant Edgar A. Sadler has refused and neg-

lected, and still and now refuses and neglects, to account to or give a statement to plaintiff or to the other beneficiaries of the said trust named in said Agreement Exhibit "L," or in any way to give a statement of business transactions, receipts or disbursements by him on account of or through the terms and provisions of said Agreement Exhibit "L."

11. That plaintiff is the equitable owner of an undivided 29% of the said Diamond Valley Ranch and appurtenances, livestock, equipment and other personal property and that the legal title to which and possession of which is held in trust by defendant Edgar A. Sadler for plaintiff, and for the heirs of Alfred R. Sadler, deceased, and for Edgar A. Sadler and Edgar L. Plummer.

12. That there was no denial, disclaimer or repudiation by defendant Edgar A. Sadler to plaintiff of the trust relationship alleged in plaintiff's Amended Complaint at any time prior to March 5, 1944.

That plaintiff's cause of action is not barred by Sec. 8524, Nevada Compiled Laws 1929, nor by subsection 4 of Sec. 8524, Nevada Compiled Laws, or by any other statute of limitations. [155]

13. That the rights, claims, demands or causes of action of the plaintiff as alleged in the Complaint are not barred by the laches of plaintiff in failing to seasonably assert his alleged rights and commence his action for recovery of same; that plaintiff has not been guilty of laches in the bringing and maintaining of this action.

(a) That Edgar A. Sadler and Alfred R. Sadler signed a note in the principal sum of \$16,500.00 secured by a mortgage on the real property described in the Complaint; that the portion of the \$16,500.00, if any, paid by defendant Edgar A. Sadler can only be determined by an accounting; that all the cattle, to-wit, 250 head, more or less, on the Diamond Ranch on March 2, 1918, and described in defendant's Exhibit "A" were held in trust by Alfred and Edgar A. Sadler for themselves and other heirs of Reinhold Sadler, deceased.

(b) That plaintiff has no interest in cattle or in any property belonging to Ethel Sadler, wife of defendant Edgar Sadler, or belonging to Floyd and Reinhold Sadler, sons of Edgar Sadler; that the quantity and volume of the cattle and property of the wife and sons of Edgar Sadler cannot be determined in advance of an accounting by Edgar Sadler of trust property.

Conclusions of Law

From the foregoing facts the Court decides:

1. That defendant Edgar A. Sadler holds and possesses the aforesaid Diamond Valley Ranch, mentioned and described in the Amended Complaint and, Exhibits attached to the original Complaint, and appurtenances, livestock, equipment and other personal property upon said ranch March 2, 1918, and the increase and proceeds thereof, in trust for plaintiff Clarence Sadler, the heirs of Alfred R. Sadler, deceased, Edgar L. Plummer and for defendant Edgar A. Sadler, in the amount and

shares to which each of the above named individuals may be entitled by the terms of the last will and testament of Reinhold Sadler, deceased, and the Statutes of Descent of the State of Nevada. [156]

2. That within six months from the date of the filing and entry of the decree made pursuant to these Findings and Conclusions of Law herein and hereinafter contained, the defendant Edgar A. Sadler shall sell the real property known and referred to herein as the Diamond Valley Ranch for the best price obtainable, but not less than the appraised value thereof unless authorized by the Court, said appraisement to be made by three appraisers: One to be appointed by defendant Edgar A. Sadler, one to be appointed by plaintiff, and the third to be appointed by the Court. And that within said period of six months said defendant Edgar A. Sadler shall account for the cattle on the ranch March 2, 1918, and for all properties, real and personal, received by him from, on account of, or through said Agreement, Exhibit "L"; and that he give an account of all his disbursements in connection with the said properties, and the Court hereby retains jurisdiction of this action for the making of such order or orders as may be necessary to provide for the time, place and manner of such accounting.

3. The Court retains jurisdiction of this action to hear, consider and determine applications on the part of beneficiaries other than the plaintiff to share in the trust property. Payne v. Hook, 19

L. Ed. 260. Jurisdiction is retained for such other and further orders as may be required to enforce all of the provisions of the trust hereby found to exist.

Let Judgment Be Entered Accordingly.

Dated: This 19th day of June, 1947.

ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed June 19, 1947. [157]

[Title of District Court and Cause.]

STATEMENT OF DOCKET ENTRIES
OF JUNE 19, 1947

1. Filing Opinion and Findings of Fact and Conclusions of Law.

2. Judgment entered this day as follows: That defendant Edgar A. Sadler holds and possesses the Diamond Valley Ranch, mentioned and described in the Amended Complaint and exhibits attached to the original Complaint, and appurtenances, livestock, equipment and other personal property upon said ranch March 2, 1918, and the increase and proceeds thereof, in trust for plaintiff Clarence Sadler, the heirs of Alfred R. Sadler, deceased, Edgar L. Plummer and for defendant Edgar A. Sadler, in the amount and shares to which each of the above named individuals may be entitled by the terms of the last will and testament of Reinhold Sadler, deceased, and the Statutes of Descent of the State of Nevada. That within six months from

the date of the filing and entry of the decree made pursuant to these Findings and Conclusions of Law herein and hereinafter contained, the defendant Edgar A. Sadler shall sell the real property known and referred to herein as the Diamond Valley Ranch for the best price obtainable, but not less than the appraised value thereof unless authorized by the Court, said appraisement to be made by three appraisers: One to be appointed by defendant Edgar A. Sadler, one to be appointed by plaintiff, and the third to be appointed by the Court. And that [158] within said period of six months said defendant Edgar A. Sadler shall account for the cattle on the ranch March 2, 1918, and for all properties, real and personal, received by him from, on account of, or through said agreement, Exhibit "L"; and that he give an account of all his disbursements in connection with the said properties, and the Court hereby retains jurisdiction of this action for the making of such order or orders as may be necessary to provide for the time, place and manner of such accounting. The Court retains jurisdiction of this action to hear, consider and determine applications on the part of beneficiaries other than the plaintiff to share in the trust property. Jurisdiction is retained for such other and further orders as may be required to enforce all of the provisions of the trust hereby found to exist.

Dated: July 21, 1947.

[Seal] AMOS P. DICKEY,
Clerk.

By /s/ DAN MURPHY,

Deputy Clerk. [159]

In the District Court of the United States of America in and for the District of Nevada

No. 371

CLARENCE T. SADLER,

Plaintiff,

vs.

EDGAR A. SADLER,

Defendant.

JUDGMENT AND DECREE

This action duly and regularly came on for trial before the Court entitled above, sitting without a jury, upon the Amended complaint of Clarence T. Sadler, plaintiff, and the answer of Edgar A. Sadler, defendant, plaintiff being present in person and with his attorneys, Springmeyer & Thompson, and defendant being present in person and with his attorneys, H. R. Cooke and John D. Furrh, Jr.;

And evidence, both oral and documentary, having been adduced on behalf of the respective parties and the Court having duly considered the same and the arguments and written briefs made and filed on behalf of the respective parties;

And the Court, being fully advised in the premises, having on June 19, 1947, made and filed herein its Opinion and Findings of Fact and Conclusions of Law, and having ordered that judgment be entered accordingly; [160]

Now, Therefore, It Hereby Is Ordered, Adjudged and Decreed:

1. That defendant Edgar A. Sadler holds and possesses the Diamond Valley Ranch, and appurtenances, livestock, equipment and other personal property upon said ranch March 2, 1918, and the increase and proceeds thereof, in trust for plaintiff Clarence Sadler, the heirs of Alfred R. Sadler, deceased, Edgar L. Plummer and for defendant Edgar A. Sadler, in the amount and shares to which each of the above named individuals may be entitled by the terms of the last will and testament of Reinhold Sadler, deceased, and the Statutes of Descent of the State of Nevada; that said Diamond Valley Ranch is situated in Eureka County, Nevada, and is particularly described as follows:

The East half of the Northeast quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$) of Section Twelve (12); the Northeast quarter ($NE\frac{1}{4}$); the South half ($S\frac{1}{2}$); and the Southwest quarter of the Northwest quarter ($SW\frac{1}{4}$ of $NW\frac{1}{4}$) of Section Thirteen (13); the East half of the East half ($E\frac{1}{2}$ of $E\frac{1}{2}$) of Section Twenty-three (23); all of Section Twenty-four (24); the North half ($N\frac{1}{2}$); and the North half of the South half ($N\frac{1}{2}$ of $S\frac{1}{2}$) of Section Twenty-five (25); and the East half of the Northeast quarter ($E\frac{1}{2}$ of $NE\frac{1}{4}$) of Section Twenty-six (26); all in Township Twenty-four (24) North, Range Fifty-two (52) East, Mount Diablo Base and Meridian; also the Southwest quarter of the Southwest quarter

(SW $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Seventeen (17); and Southwest quarter (SW $\frac{1}{4}$); the West half of the Southeast quarter (W $\frac{1}{2}$ of SE $\frac{1}{4}$), and the Southeast quarter of the Southeast quarter (SE $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section Eighteen (18); the West half (W $\frac{1}{2}$); and the West half of the East half (W $\frac{1}{2}$ of E $\frac{1}{2}$) of Section Nineteen (19); the Southwest quarter of the Northwest quarter (SW $\frac{1}{2}$ of NW $\frac{1}{4}$) of Section Twenty-nine (29); and the North half (N $\frac{1}{2}$) of Section Thirty (30); all in Township Twenty-four (24) North, Range Fifty-three (53) East, Mount Diablo Base and Meridian; containing approximately Three Thousand One Hundred Twenty (3120) acres, and constituting what is commonly known as the Diamond Valley Ranch.

Together with all the waters of the Big Shipley Springs flowing, or to flow to, over or through said lands hereinbefore described, together with all water, water rights, dams, ditches, flumes, water-ways and privileges used for the irrigation of said lands from said springs, and also with all of the water of those certain springs, situate in the Northeast quarter (NE $\frac{1}{4}$) of Section Twenty-six (26) Township Twenty-four (24) North, Range Fifty-two (52) East, Mount Diablo Base and Meridian, flowing or to flow to, over or through said lands hereinbefore described, together with all the water, water rights, dams, ditches,

flumes, water-ways and privileges used for the irrigation of said lands from said springs;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

2. That within six months from the date of the filing and entry of this decree the defendant Edgar A. Sadler shall sell the real property known and referred to herein as the Diamond Valley Ranch for the best price obtainable, but not less than the appraised value thereof unless authorized by the Court, said appraisement to be made by three appraisers; one to be appointed by defendant Edgar A. Sadler, one to be appointed by plaintiff, and the third to be appointed by the Court. And that within said period of six months said defendant Edgar A. Sadler shall account for the cattle on the ranch March 2, 1918, and for all properties, real and personal, received by him from, on account of, or through said Agreement, Exhibit "L"; and that he give an account of all his disbursements in connection with the said properties, and the Court hereby retains jurisdiction of this action for the making of such order or orders as may be necessary to provide for the time, place and manner of such accounting.

3. The Court retains jurisdiction of this action to hear, consider and determine applications on the part of beneficiaries other than the plaintiff to share

in the trust [162] property. Jurisdiction is retained for such other and further orders as may be required to enforce all of the provisions of the trust hereby found to exist.

4. That plaintiff Clarence T. Sadler have judgment against defendant Edgar A. Sadler, for his costs and disbursements taxed herein at the sum of \$72.60.

Dated: June 19th, 1947.

ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed Aug. 6, 1947. [163]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS (UNDER RULE
73(b))

Notice Is Hereby Given that Edgar A. Sadler, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment made and entered in the above-entitled action on June 19, 1947, in favor of the above named plaintiff and against the above named defendant, and from the whole thereof.

/s/ JOHN D. FURRH, JR.,
/s/ H. R. COOKE,

Attorneys for Defendant and
Appellant.

[Endorsed]: Filed July 16, 1947. [164]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents: That we, Edgar A. Sadler, of Eureka, Eureka County, Nevada, as principal, and the American Surety Company of New York, a corporation organized under the laws of the State of New York and duly qualified to transact a surety business in the State of Nevada, as surety, are held and firmly bound unto the above named plaintiff, Clarence T. Sadler, in the sum of Two Hundred and Fifty Dollars (\$250.00), lawful money of the United States of America, to be paid to the said plaintiff, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of July, 1947.

The condition of the above obligation is such that, Whereas on June 19, 1947, a judgment and decree was entered against the defendant, Edgar A. Sadler, in the above-entitled action and said defendant and appellant, Edgar A. Sadler, appeals to the United States Circuit Court of Appeals for the Ninth Circuit;

Now Therefore, if the said Edgar A. Sadler shall prosecute an appeal with effect and pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the

judgment is modified, then the above obligation to be void, otherwise to remain in full force and effect.

Signed and Sealed and dated this 12th day of July, 1947.

EDGAR A. SADLER,
Principal.

[Corporate Seal]

AMERICAN SURETY
COMPANY OF NEW YORK.

By HOWARD PARISH,
Resident Vice President.

JOHN T. McLAUGHLIN,
Resident Asst. Secretary.

State of Nevada,
County of Washoe—ss.

On this 15th day of July, 1947, before me, a Notary Public, personally appeared John T. McLaughlin, known to me to be the Resident Asst. Secretary of the corporation that executed the foregoing instrument, and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by the officers of said corporation as indicated after said signatures, and that the said corporation executed the

said instrument freely and voluntarily and for the purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, the day and year in this Certificate first above written.

[Seal] ETHEL F. SAVAGE,
 Notary Public.

[Endorsed]: Filed July 16, 1947. [166]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Point 1.

The Trial Court should have granted the motion of defendant Edgar A. Sadler for dismissal of the original Complaint, or in the alternative, that plaintiff be required to make a more definite statement of matters in the Notice of Motion particularly set out. Said Notice of Motion being served on October 16, 1944, filed herein on October 17, 1944, and which Motion was denied January 17, 1945. [167]

Point 2.

The Trial Court should have granted the Motion by defendant Edgar A. Sadler for dismissal of plaintiff's Amended Complaint, notice of which motion was dated February 17, 1945, served on February 19, 1945, and filed herein on February 20, 1945, and which Motion was denied October 17, 1945.

Point 3.

The Trial Court should have granted the Motion of defendant Edgar A. Sadler for a dismissal of plaintiff's action for lack of jurisdiction by said court over the subject matter, and for the further reason that plaintiff's Amended Complaint failed to state a claim upon which relief could be granted. Notice of which motion was served August 1, 1946, and filed herein August 2, 1946.

Point 4.

That Finding No. 2 that Reinhold Sadler at the time of his death on January 29, 1906, was the owner of and in the possession of certain shares of stock in the Huntington Valley Stock and Land Company is without support in the evidence and is contrary thereto.

Opinion and Findings
Finding No. 2, Page 5

Point 5.

That Finding No. 6 that Exhibit C attached to the original Complaint, being a stipulation made on or about February 14, 1918, between plaintiff and defendants in the action therein referred to, whereby it was stipulated that the legal title to the [168] said lands and property be transferred to Edgar A. Sadler and Alfred R. Sadler, is in error, in that said stipulation provides that judgment may be entered that Edgar and Alfred Sadler were the own-

ers and entitled to the possession of the Diamond Valley Ranch and that none of the other parties to action had any right, title or estate in the property or any part thereof; that said stipulation was in no way restricted or limited to the bare "legal" title.

Opinion and Findings
Finding No. 6, Page 7

Point 6.

That said Finding No. 6 that said stipulation was entered into by the parties thereto pursuant to an agreement between them that said Edgar A. Sadler and Alfred R. Sadler would acquire and hold the legal title to said real property and would take and hold possession of the livestock, ranch and equipment and other personal property situated thereon in trust for the heirs of Reinhold Sadler, deceased, is without support in the evidence and contrary thereto.

Opinion and Findings
Finding No. 6, Page 7

Point 7.

That Finding No. 9 that the defendant, Edgar A. Sadler, made or signed the written memorandum of the referred to agreement to hold in trust for the heirs of said Reinhold Sadler, deceased, the Diamond Valley Ranch and all livestock and other personal property upon said ranch is without support in the evidence and contrary thereto. That said written memorandum, if same was ever signed by

Edgar A. Sadler, does not mention personal property upon said [169] ranch, nor does it mention or include all livestock, but merely refers to "ranch cattle."

Opinion and Findings
Finding No. 9, Page 8

Point 8.

That the Finding No. 12 that there was no denial, disclaimer or repudiation by defendant Edgar A. Sadler to plaintiff of the trust relationship (as found by the court) at any time prior to March 5, 1944, is without support in the evidence and is contrary thereto, in that the uncontradicted evidence (Letter of plaintiff to Alfred dated July 28, 1932, Ex. N) shows that at least as early as July 28, 1932, Edgar A. Sadler had repudiated the "trust" claimed by plaintiff, and that said plaintiff as well as his attorney-in-fact had full notice and knowledge of defendant's said acts.

Opinion and Findings
Finding No. 12, Page 9

Point 9.

The Court's Finding No. 12 that plaintiff's cause of action is not barred by Section 8524, Nevada Compiled Laws 1929, nor by Subsection 4 of Sec. 8524 N.C.L., nor by any other statute of limitations, has no support in the evidence and is contrary thereto, in that, *inter alia*:

- (a) Defendant's action in executing and recording of different chattel mortgages in his

sole name as mortgagor, commencing as early as March 28, 1929, and known to plaintiff, starts statute to run.

(b) Plaintiff's letters, particularly Ex. N, dated July 28, 1932, showing knowledge by plaintiff of Edgar Sadler having (according to plaintiff) wrongfully appropriated and converted [170] to his own use, the cattle claimed by plaintiff and found by the court to be a part of said "trust."

(c) Plaintiff's attorney-in-fact Alfred R. Sadler's letter of September 13, 1937, Ex. K, showing plaintiff knew Edgar Sadler had sold 800 head of the cattle for \$60.00 per head, aggregating \$48,000.00, and retained the money as his own.

**Opinion and Findings
Finding No. 12, Page 9**

Point 10.

That the Finding No. 13 that the rights, claims, demands or causes of action of the plaintiff as alleged in the Complaint are not barred by the laches of plaintiff in failing to seasonably assert his alleged rights and commence his action for the recovery of same; that plaintiff has not been guilty of laches in the bringing and maintaining of this action, is without support in the evidence and contrary thereto in that the uncontradicted evidence is, *inter alia*:

(a) Plaintiff's letter of July 28, 1932, Ex. N, showing plaintiff then knew of repudiation by defendant of any trust.

(b) Letter of plaintiff's attorney-in-fact Alfred Sadler of September 13, 1937, Ex. K, wherein reference is made to Edgar selling about 800 head of cattle for \$60.00 per head. (Defendant never made any account or report of said transaction, and plaintiff never requested any.)

Opinion and Findings
Finding No. 13, Page 10

Point 11.

That the Trial Court's Finding No. 13, concluding sentence of Subparagraph (a) thereof, that all the cattle, to-wit: 250 head, more or less, on the Diamond Ranch on March 2, 1918, and described in defendant's Exhibit A, were held in trust by Alfred and Edgar A. Sadler for themselves and other heirs of Reinhold Sadler, deceased is, as to 200 head of cattle, without support in the evidence and contrary thereto, in that the uncontradicted evidence, *inter alia*, is that:

(a) Said 200 head were branded (), the personally owned brand of defendant, and were described by said brand in the real and chattel mortgage, Ex. A, made by Alfred and Edgar on March 2, 1918, and the so-called Ranch cattle were therein described as branded J-C;

(b) Plaintiff had notice as early as March 28, 1929, Ex. S, that Edgar was mortgaging the cattle (now claimed to be trust property) in his own name, which was followed with some 8 ad-

ditional mortgages on cattle, to the exclusion of Alfred, and of course in flagrant breach of the "trust" as plaintiffs now contends for;

(c) Plaintiffs admits (Transcript 525) that "Prior to Alfred's death he (Edgar) said I had no interest in the ranch," in answer to question as to the first intimation he had that Edgar had repudiated this "trust."

Opinion and Findings
Finding No. 13, Subpar.
(a), P. 10

Point 12.

That the Trial Court's conclusion of law No. 1, that defendant Edgar A. Sadler holds and possesses the said Diamond [172] Valley Ranch with appurtenances, livestock, and other personal property upon said Ranch on March 2, 1918, and the increase and proceeds thereof, in trust for plaintiff, the heirs of Alfred R. Sadler, deceased, Edgar L. Plummer and defendant, according to the last will of Reinhold Sadler, deceased, and the statutes of descent of Nevada, is contrary to law, is without support in the evidence, and is contrary thereto.

Opinion and Conclusions
Conclusion No. 1, Page 10

Point 13.

That the Trial Court's Conclusion of Law No. 2 is contrary to law, without evidence in support, and contrary thereto.

Opinion and Conclusions
Conclusion No. 2, Page 11

Point 14.

That the Trial Court's Conclusion of Law No. 3 is contrary to law, without evidence in support, and contrary thereto.

Opinion and Conclusions
Conclusion No. 3, Page 11

Point 15.

That the Trial Court should have found that defendant's first affirmative defense (Statute of Limitations) was well founded and true.

Point 16.

That the Trial Court should have found that defendant's second affirmative defense (Laches) was well founded and true.

Point 17.

That the Trial Court should have found that defendant's [173] third affirmative defense (absence of indispensable parties) was well founded and true.

Point 18.

That the Trial Court should have found that defendant's fourth affirmative defense (No consideration for alleged Trust) was well founded and true.

Point 19

That the Trial Court should have found that defendant's fifth affirmative defense (Statute of Frauds) was well founded and true.

Point 20.

That the Trial Court should have found that defendant's sixth affirmative defense (Rule against Perpetuities) was well founded and true.

/s/ JOHN D. FURRH, JR.,
/s/ H. R. COOKE,

Attorneys for Defendant and
Appellant.

[Endorsed]: Filed July 16, 1947. [174]

[Title of District Court and Cause.]

ACCEPTANCE OF SERVICE

Due service of the Notice of Appeal to the Circuit Court of Appeals, Bond for Costs on Appeal, and Statement of Points on which Appellant intends to Rely on Appeal, admitted, by copy, this 15th day of July, 1947.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff.

[Endorsed]: Filed July 16, 1947. [175]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the above-entitled court:

You are hereby requested to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal in the above-entitled cause, and to include in such Transcript of Record the following:

1. Original Complaint (with Exhibits A, B, C, D, I and L annexed)—filed September 16, 1944;

Notice of Motion by defendant to Dismiss Complaint, or in the alternative, to strike a portion thereof, and to make more definite.—Filed October 17, 1944. [176]

File Order of Court denying said Motion, made January 17, 1945.

2. Amended Complaint, filed February 2, 1945, with Amendment to Amended Complaint, dated May 31, 1946.

Notice of Motion by defendant to Dismiss plaintiff's Amended Complaint, dated February 17, 1945, served February 19, 1945, and filed February 20, 1945.

File Order of Court denying said Motion, made October 17, 1945.

3. Notice of Motion by defendant for Dismissal of plaintiff's action for lack of jurisdiction over the subject matter and for the further reason plaintiff's Amended Complaint failed to state a claim

upon which relief could be granted. Served August 1, 1946, and filed herein August 2, 1946.

Order Denying said Motion, made September 18, 1946.

4. Answer of Defendant Edgar A. Sadler, filed herein on November 17, 1945, with Amendment to Paragraph II thereof as later allowed by the Court.

5. Trial Court's Opinion and Findings of Fact and Conclusions of Law, together with direction of entry of Judgment, dated and filed June 19, 1947.

6. Judgment and Decree appealed from.

7. Relevant Docket Entries.

8. Exhibits as Follows:

Plaintiff's Exhibits 5, 6, 7, 9, 14, 17, 18, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 43.

Defendant's Exhibits C, D, E, F, H, K, F-1.

9. Transcript of entire proceedings as reported and [177] certified by the Court Reporter as of date December 4, 1946, consisting of Volumes I and II.

10. Notice of Appeal, filed herein on July 16, 1947.

11. Bond for Costs on Appeal, filed herein on July 16, 1947.

12. Statement of Points on Which Appellant Intends to Rely on Appeal, filed herein on July 16, 1947.

13. This Praeclipe and service thereon.

Said Transcript to be prepared as required by law and the Rules of this Court and the Federal Rules of Civil Procedure, and to be filed in the office of the Clerk of the Ninth Circuit Court of Appeals on or before the day of , 1947.

Dated: July 19, 1947.

/s/ H. R. COOKE,

/s/ JOHN D. FURRH, JR.,

Attorneys for Defendant
and Appellant.

Service, by copy, of the foregoing Designation of Record admitted this 19th day of July, 1947.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff
and Respondent.

[Endorsed]: Filed July 19, 1947. [178]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated that the carbon copy of the official court reporter's Transcript as certified by her, and now on file with the Clerk of the above-entitled Court, may be transmitted to the United States Court of Appeals, Ninth Circuit, as an original; same being for use of the appellate court in

printing the record, as provided for by Rule 75,
subparagraph (b) of the Rules of Civil Procedure.

Dated: July 25, 1947.

SPRINGMEYER &
THOMPSON,
Attorneys for Plaintiff.

JOHN D. FURRH, JR.,
H. R. COOKE,
Attorneys for Defendant.

ORDER

The foregoing Stipulation being submitted to the Court with the application of defendant for the order referred to, and it appearing to be a proper case:

It Is Ordered: That the carbon copy of the official court reporter's Transcript as certified by her, and now on file in the office of the Clerk of the above-entitled Court, may be sent up to the United States Circuit Court of Appeals, Ninth Circuit, as an original and for the use of said appellate court in printing the Record.

Dated: August 1, 1947.

ROGER T. FOLEY,
U. S. District Judge.

[Endorsed]: Filed Aug. 1, 1947. [180]

[Title of District Court and Cause.]

**ORDER FOR TRANSFER OF ORIGINAL
EXHIBITS TO APPELLATE COURT**

On Motion of the attorneys for plaintiff named above, it appearing to the satisfaction of the Court that the original exhibits described in said motion should be sent to and inspected by the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal in the action entitled above, and good cause appearing therefor in accordance with the provisions of Rule 75(i) of the Federal Rules of Civil Procedure;

It Hereby Is Ordered that the Clerk of the Court entitled above transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by registered mail for inspection by said Court as part of the record on appeal in this action the following original exhibits: Plaintiff's Exhibits Nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

It Further Is Ordered that upon the final conclusion of the appellate proceedings in this action said exhibits be returned by [181] registered mail to the Clerk of the Court entitled above.

Dated: July 30, 1947.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed Aug. 5, 1947. [182]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET AND
FILE RECORD IN CIRCUIT COURT OF
APPEALS

Upon motion of Amos P. Dickey, Clerk, U. S. District Court, and good cause appearing therefor,

It Is Hereby Ordered that the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the Circuit Court of Appeals in and for the Ninth Circuit be, and the same hereby is, extended to and including September 15, 1947.

Dated: August 19th, 1947.

/s/ ROGER T. FOLEY,

United States District Judge,
District of Nevada.

[Endorsed]: Filed Aug. 19, 1947. [183]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK,
U. S. DISTRICT COURT

United States of America,
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District

Court for the District of Nevada, including the records, papers and files in the case of Clarence T. Sadler, Plaintiff, vs. Edgar A. Sadler, Defendant, No. 371, on civil docket of said court.

I further certify that the attached transcript consisting of 185 typewritten pages numbered from 1 to 185, inclusive, contains a full, true and correct transcript of the proceedings in said matter and of all papers filed therein, together with the endorsements of filing thereon, as set forth in "Appellant's Designation of Record" filed July 19, 1947, all of which are filed in this case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

I further certify that, pursuant to Order of Court, which Order is made a part of this transcript, the following original exhibits were transmitted to the Clerk of the U. S. Circuit Court of Appeals for the Ninth Circuit by registered mail under separate [184] cover: Plaintiff's Exhibits Nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

I further certify that accompanying this record on appeal, pursuant to stipulation and order of this Court, both of which are made a part of this transcript, is the carbon copy of the official court reporter's Transcript as certified by her, and now on file in this office and is sent up to the United States Circuit Court of Appeals for the Ninth Circuit as an original and for the use of said appellate Court in printing the record.

And I further certify that the cost of preparing and certifying to said record, amounting to \$46.10 has been paid to me by H. R. Cooke, Esq., and John D. Furrh, Jr., Esq., attorneys for the appellant.

Witness my hand and the seal of said United States District Court this 26th day of August, 1947.

[Seal] AMOS P. DICKEY,
Clerk, U. S. District Court.

By /s/ J. P. FODRIN,
Deputy. [185]

In the District Court of the United States,
in and for the District of Nevada

Before: Hon. Roger T. Foley,
Judge.

No. 371

CLARENCE T. SADLER,

Plaintiff,

vs.

EDGAR A. SADLER and KATHRYN POWERS
SADLER, as administratrix of the Estate of
Alfred R. Sadler, deceased,
Defendants.

TRIAL

Be It Remembered, That the above entitled matter came on regularly for trial before the Court

sitting without a jury, at Reno, Nevada, on Monday, the 14th of October, 1946, at 10:00 o'clock a.m., Hon. Roger T. Foley, Judge, presiding.

Appearances:

George Springmeyer, Esq., Bruce R. Thompson, Esq., Attorneys for Plaintiff.

H. R. Cooke, Esq., John D. Furrh, Esq., Attorneys for Defendant Edgar A. Sadler.

The following proceedings were had:

Mr. Thompson: Does your Honor desire a summary of the proceedings?

The Court: Perhaps it would be well to give a brief summary of the pleadings. [1*]

Mr. Thompson: In this case, your Honor, the plaintiff, in his complaint, has alleged that Reinhold Sadler, who is the husband of Louisa Sadler and the father of Edgar Sadler, Bertha Sadler, Clarence Sadler and Alfred Sadler, died on January 29, 1906. We have alleged that at the time of his death he was the owner of certain shares of stock in the Huntington & Diamond Valley Land & Stock Company, a California corporation, and was the owner of certain real property in Eureka County, Nevada, known as the Diamond Valley Ranch. The allegation of his ownership of the stock in the corporation and of the real property in Eureka County at the time of his death have been denied by the defendant, Edgar Sadler. The plaintiff further has alleged that on December 31, 1915, a quiet title action was commenced in Elko County, Nevada,

* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

whereby the Huntington & Diamond Valley Land & Stock Company sought to quiet title to certain lands in Elko, White Pine, and Eureka Counties, Nevada, and as part of those lands there was included the Diamond Valley Ranch situated in Eureka County, Nevada. We have alleged that on February 14, 1918, the parties to that action, and among the defendants to that action were Louisa Sadler as administratrix of the Estate of Reinhold Sadler, deceased, Edgar Sadler, this defendant, Clarence Sadler, this plaintiff, Bertha Sadler, a sister, and Alfred Sadler, a brother of Edgar and Clarence, all those parties were among defendants in the quiet title case. We [2] have alleged and it has been admitted that stipulation was entered into on February 14, 1918, whereby and pursuant to which a consent decree quieting title was entered on March 2, 1918. The stipulation provided that the plaintiff's title, that is the Huntington & Diamond Valley Land & Stock Company's title, to the lands in Elko and White Pine County should be quieted in the plaintiff corporation and that the title to the land in Eureka County, Nevada, which is known as the Diamond Valley Ranch, should be quieted in Edgar and Alfred Sadler. The plaintiff has alleged that this stipulation was entered into pursuant to an agreement between all the heirs of Reinhold Sadler, deceased, who included at that time the living heirs, Louisa A. Sadler, his widow, Edgar Sadler, Alfred Sadler, Clarence Sadler and Bertha Sadler, whereby it was agreed that the ranch would be mortgaged for sufficient to pay the plaintiffs in the quiet title

suit \$15,000 and to pay the attorney fees in the sum of \$1500 and that Edgar and Alfred Sadler would hold the property in trust for all heirs of Reinhold Sadler, deceased, according to the provisions of Reinhold Sadler's will, a copy of which is attached to the complaint as an exhibit and has been admitted by the defendant. The plaintiff also has attached, as part of his pleadings, a memorandum of agreement dated March 2, 1918, which sets forth the essential provisions of the trust agreement and which is purportedly signed by Alfred Sadler and Edgar Sadler, the trustees. The defendant, Edgar Sadler, has denied the making of the agreement as alleged, on which the stipulation for the settlement of the quiet title suit was allegedly based, and has denied that he signed the memorandum of agreement dated March 2, 1918. The plaintiff seeks to impose a trust on the ranching property known as the Diamond Valley Ranch situated in Eureka County, Nevada, for the benefit of all the heirs of Reinhold Sadler, deceased, according to the trust agreement as completed. In addition to the facts as I have stated them, the complaint sets up that after the decree quieting title was entered, the plaintiff corporation in the quiet title suit, the Huntington & Diamond Valley Land & Stock Company, through its attorney in fact, Herman Sadler, deeded the property known as the Diamond Valley Ranch to Edgar and Alfred Sadler and that the deed was later confirmed by a deed from the corporation itself. The plaintiff asks that a trust be impressed on this ranching property, also on the

cattle, machinery and equipment on the ranch and used in connection therewith, which were included in the trust agreement dated March 2, 1918.

As we understand the pleadings, the disputed issues, from plaintiff's point of view, are the ownership by Reinhold Sadler of the ranch in Eureka County, Nevada, and of the stock in the Huntington & Diamond Valley Land & Stock Company at the time of his death and the making and entering into of the trust agreement as alleged in the complaint. Those are the two principal [4] disputed issues, so far as the plaintiff is concerned.

The Court: Would you mind repeating those again.

Mr. Thompson: The first issue is whether Reinhold Sadler, the father, at the time of his death in January, 1906, owned the Diamond Valley Ranch and owned stock in the Huntington & Diamond Valley Land & Stock Company, a California corporation. The defendant, Edgar Sadler, by virtue of an amendment to his answer, has denied that allegation.

The second principal issue is whether the trust agreement was entered into in February, 1918, as alleged, and whether Edgar Sadler did sign the memorandum of that agreement dated March 2, 1918, a copy of which is attached to the complaint as Exhibit "L."

At this time we would like to suggest to the Court that in this trial the point at issue is whether the property described in the complaint and in the amended complaint should be impressed with a trust for the benefit of plaintiff and the other heirs

of Reinhold Sadler. In accordance with good practice, we do not believe that the question of an accounting should be gone into at this time. As we understand the law with reference to orderly procedure in cases of this character, the courts do not try the question of an accounting until they first determine whether there is a trust, whether the defendant is a trustee and should be required to account. If the court should decree a trust in accordance [5] with the complaint as a part of the decree, the court may and should order an accounting, but the trial at this time should not be confused with issues regarding an accounting before the principal issue of whether an accounting is necessary is first determined.

The Court: Perhaps counsel will agree with that, that that would be the proper procedure.

Mr. Cooke: Yes, we made that suggestion in previous proceedings.

Mr. Thompson: The defendant, Edgar Sadler, your Honor, has set up some affirmative defenses which he might wish to explain to your Honor.

The Court: Do you desire to make any statement of the issues, Mr. Cooke?

Mr. Cooke: I first wish to make a motion that the judgment be entered against the plaintiff in favor of the defendant, Edgar Sadler, based upon counsel's statement of his case, upon the ground that the statement made by counsel, taken in connection with the admitted allegations and with the admitted documents already before the Court, does not show a case where this court would, in the exercise of its equity powers, have any authority to

decree a trust. This general ground is based upon the proposition that they are relying, the plaintiff's case is in reliance, upon an oral agreement made preliminary to the so-called written trust agreement that counsel has referred to of March 2, 1918, which Mr. Edgar Sadler denies but which, for the purpose of the motion, of course, will be admitted. The point we make there is that that agreement of March 2, 1918, cannot be enlarged or broadened in its scope to any extent whatsoever by any preliminary oral arrangements or agreements made between the parties. Your Honor may recall that that matter came up before, at which time the proposition was sharply presented that under the statute of authorities in Nevada no oral agreement, purporting to create a trust on real property, is allowed. It is a very positive mandate of the statute and your Honor will recall that in this case it was alleged that in February, I think it was, 1918, the parties had an agreement. They don't say oral, but I think that in the pre-trial conference that that was established, whatever it was at that time, was an oral arrangement that they would have this trust agreement, but whatever that agreement was is disposed of by the further allegations in their complaint that that agreement, the agreement between the parties—I undertake to say that that means the whole of the agreement—was reduced to writing and that is found in this Exhibit "L" of March 2, 1918, which your Honor may recall recites that the ranch and the cattle shall be disposed of at the first good opportunity to get a good price

and the lawyers' fees paid and the proceeds divided among the heirs of Reinhold Sadler, as stated in his will. [7]

The point I am trying to make there is, your Honor, that, firstly, Exhibit "L" is not a trust agreement. It does not state any of the essential elements of a trust agreement and that a preliminary agreement, such as they injected into this case by amendment, an oral agreement, enlarging it and broadening it and designating the trust, there wasn't any trust agreement before the Court, therefore, according to counsel's own statement, no case is made to the Court when you apply the law, for the Court to decree a trust. I am making that for the purpose of the record and such action as the Court sees fit to take.

The Court: The motion is denied without any prejudice to consideration of similar points during the course of the trial or at the conclusion of the trial. Do you want to make any statement in regard to the issues of the trial?

Mr. Cooke: Either now or later.

The Court: You do not have to do it now. Are you ready to proceed, Mr. Thompson?

Mr. Thompson: We are ready, your Honor.

The Court: I take it you do not care to make a statement now, Mr. Cooke?

Mr. Cooke: Yes, your Honor, I do.

The Court: Go ahead. [8]

Statement by Mr. Cooke.

Mr. Thompson: Mr. Edgar Sadler, will you be sworn for cross-examination under the rule, please?

EDGAR SADLER

being first duly sworn, testified under the rule as follows:

Examination

By Mr. Thompson:

Q. Your name is Edgar Sadler?

A. Yes, sir.

Q. You are the defendant in this case we are trying now? A. Yes, sir.

Q. When were you born, Mr. Sadler?

A. September 29, 1876.

Q. Where were you born? A. Eureka.

Q. In the city of Eureka?

A. In the town of Eureka, no city.

Q. That is Eureka, Nevada? A. Yes.

Q. Were your parents Reinhold S. and Louisa Sadler living on a ranch in Eureka County at that time? A. No, sir.

Q. They were living in the town of Eureka?

A. Yes, sir.

Q. Are you familiar with the ranching property in Eureka County, Nevada, known as the Diamond Ranch? [9] A. Yes, sir.

Q. And that is the same property, the title to which was decreed to you and Alfred Sadler in the quiet title suit in Elko County on March 2, 1918?

A. Yes, sir.

Q. And that property is described in that decree, is it? A. Yes, sir.

Q. When did you first live on the Diamond Ranch?

(Testimony of Edgar Sadler.)

A. Well, I lived there off and on for pretty near 55 years. I lived on the Huntington Ranch part of the time.

Q. The Huntington Ranch is not part of it?

A. Well, it is according to where I lived. I lived there part of the time and then I lived at the Diamond Ranch.

Q. You say you have lived there most of the time throughout your life, is that right?

A. For the most of it.

Q. Did you ever have any employment other than as a ranch owner and manager?

A. Oh, I was in politics. I was in the Assembly and I was a senator and I was commissioner.

Q. County commissioner? A. Yes.

Q. For Eureka County? A. Yes.

Q. When was that? [10]

A. I can't give the dates.

Q. And when was it, for the 35th session of the Legislature, you were assemblyman from Eureka County, that was in 1931?

A. No, I was in 1931 and 1932, I think.

Q. You were an assemblyman? A. Yes.

Q. And later, 1937 I believe it was, you were in the Senate, I believe, from Eureka County, were you not? A. Yes, sir.

Q. Other than your commissioner office, have you had any other employment, gainful employment, other than ranching, as ranch manager?

A. Oh, I ran a stage there for a while.

(Testimony of Edgar Sadler.)

Q. When was that?

A. Oh, I think it was 1915 or somewhere along in there.

Q. Most of your life though you have lived on the Diamond Ranch, have you not?

A. Most of it.

Q. When were you married?

A. September 11, 1907; I think that is right.

Q. And your wife is Ethel Sadler?

A. Yes.

Q. She is still living, is she not?

A. Yes, sir.

Q. Do you recall your father's, Reinhold Sadler, death in January, 1906? [11] A. Oh, yes.

Q. And where were you living at that time?

A. At the ranch.

Q. And that is at the Diamond Ranch?

A. Yes.

Q. And you were engaged in running that ranch, is that true? A. Yes.

Q. And that was your means of livelihood at that time? A. Oh, I guess so.

Q. And has that continued to be your means of livelihood down to and including the present time?

A. Well, I guess it has.

Q. Well, since 1907, you have been living continuously on the Diamond Ranch, have you not?

A. Yes, I have been living there.

Q. And you have been devoting most of your time to managing and operating that ranch?

A. Oh, yes.

(Testimony of Edgar Sadler.)

Q. At the time your father, Reinhold Sadler, died your mother, Louisa Sadler, was living?

A. Yes.

Q. And she lived until 1923?

A. I think so.

Q. Your brother, Alfred Sadler, was also alive?

A. Yes. [12]

Q. And your brother, Clarence Sadler?

A. Yes.

Q. He is the plaintiff in this case? A. Yes.

Q. Your sister, Bertha Sadler, was also alive at that time? A. Yes.

Q. Do you recall the commencement of the quiet title action by the Huntington & Diamond Valley Land & Stock Company late in 1915 in Elko County?

A. No.

Q. You do not recall that?

A. No, I didn't know anything about it at all. It was started down here.

Q. Were you served with papers in that case?

A. Oh, yes, afterwards.

Q. And you were named as a defendant in that case? A. Yes.

Q. And your brothers, Alfred and Clarence Sadler, were also named as defendants, were they not?

A. I think so.

Q. And your mother, Louisa Sadler, was named as a defendant? A. I think so.

Q. Personally and as administratrix of your father's estate; and your sister, Bertha, was also a defendant? A. Yes. [13]

(Testimony of Edgar Sadler.)

Q. Now at the time that action was commenced, or shortly thereafter, did you and Alfred Sadler arrange with the law firm of Cheney, Downer, Price & Hawkins to represent you in that action?

A. They wouldn't be representing me. They were representing the other party. I had Curler & Castle.

Q. In Elko, Nevada? A. Yes.

Q. And that firm consisted of Mr. H. U. Castle— A. Yes.

Q. —and Benjamin L. Curler? A. Yes.

Q. They were partners in law in Elko at that time? A. That's right.

Q. They represented you in the quiet title suit?

A. Yes.

Q. They also represented Alfred Sadler?

A. Well, I don't know. I don't think so. I think they had these lawyers down here.

Q. You and the other members of your family filed a joint answer to the complaint in the quiet title suit, did you not, Mr. Sadler? I show you Exhibit 1 for identification, which purports to be a certified copy of that answer.

A. Well, I guess I signed that.

Q. I think that Alfred Sadler signed it, but it was filed on [14] behalf of all of you, is that not true? A. Yes, I guess so.

Mr. Thompson: I offer the Answer in evidence, your Honor, as Plaintiff's Exhibit 1 for identification. I think Mr. Cooke has already seen it.

Mr. Cooke: This document, your Honor, shows nothing I have seen it before, but haven't given it

(Testimony of Edgar Sadler.)

any special examination, but I do not believe it has any bearing on this case, but we formally object to its admission in evidence on the ground, firstly, that no proper foundation has been laid showing that the defendant, Edgar Sadler, is bound by any of the statements that may be contained in the document; that it purports on its face to be the answer of a number of defendants, including Edgar Sadler, but is verified by Alfred Sadler alone and there is nothing before the Court showing that Edgar Sadler is or should be legally bound by statements made by Alfred Sadler or that he knew anything about what the answer was or that he authorized the making of it or that he authorized Alfred Sadler to verify the answer. Do you mind stating what portion of that Answer has any bearing on this case?

Mr. Thompson: Paragraph 9.

Mr. Cooke: Counsel has mentioned paragraph 9 as being the portion of the document that he thinks has some potential value in this case. We make the further and special objection on the ground that paragraph 9 purports to be a plea [15] on the part of the defendants of five years' adverse possession and that that plea has been disposed of by the entry of the final judgment in the action wherein the title to the properties, other than the property in Eureka County, was adjudicated to the plaintiff, the Huntington & Diamond Valley Corporation, and as to the lands in Eureka County, the property was adjudicated and decreed to Alfred Sadler and to Edgar Sadler, pursuant to a stipulation that was entered

(Testimony of Edgar Sadler.)

into and that, therefore, as we see it, the allegation of paragraph 9, or any plea of adverse possession, would have no bearing or no value in determining the question of whether or not there is a trust existing in the instant case.

The Court: May I see the document, please?

Mr. Thompson: If the Court please, we are entitled to show the circumstances surrounding the execution of this alleged trust agreement. Mr. Edgar Sadler apparently claims he has some special interest in that property and had it at that time. We are entitled to show what the parties claimed at that time as a foundation for an agreement between them. That is a joint answer of all the heirs of Reinhold Sadler in the quiet title action, shows that they got together and made their claim to the ranch together. It shows that it was signed by Castle & Curler, whom Mr. Edgar Sadler has admitted were his authorized agents in that action, representing him, and a judicial admission of that character surely is entitled to [16] weight as evidence. How much weight your Honor will give it is another matter, depending, I assume, on the rest of the evidence in the case, but it is relevant and material. Your Honor will note that Mr. Sadler has denied that Reinhold Sadler owned the property at the time of his death, which amounts to a denial that he claimed his interest in the property as an heir at that time. He apparently claimed some special interest regarding which we are not informed at this time, but we are entitled to show that his claim at that time was as an heir of Reinhold Sadler.

(Testimony of Edgar Sadler.)

Mr. Cooke: No use of my saying what his claims are when we know the court has denied it.

The Court: The exhibit may be admitted in evidence as Plaintiff's Exhibit 1.

Mr. Thompson: Did your Honor read the paragraph I referred to?

The Court: You may read it again so the record will show.

Mr. Thompson: We first make the point, your Honor, that this answer is the joint answer of Louisa Sadler, as administratrix of the estate of Reinhold Sadler, deceased, Louisa Sadler, Edgar Sadler, Bertha Sadler, Alfred Sadler and Clarence Sadler. We also wish to read paragraph 9 of the Answer as follows:

"And further answering said plaintiff's [17] amended complaint, these defendants aver that for more than five years last past, the plaintiff has not been in possession of any of the lands or water rights described in said plaintiff's amended complaint, as situate and being in the County of Eureka, State of Nevada, and that for more than five years last past these defendants, or some of them, have been in the open, exclusive, peaceable and adverse possession of all of the lands and premises and water rights mentioned in said plaintiff's amended complaint, as being and situate in the County of Eureka, State of Nevada, and during said time these defendants, or some of them, have paid the taxes levied and assessed against the said lands and premises in Eureka County, Nevada."

(Testimony of Edgar Sadler.)

Q. Mr. Sadler, isn't it a fact that after your father's death and prior to the alleged trust agreement of March 2, 1918, and the settlement of the quiet title suit we have mentioned, you claimed your interest in the Diamond Ranch as an heir of Reinhold Sadler, your father? A. No.

Q. Isn't it true, Mr. Sadler, that in the year 1912 you executed and acknowledged a power of attorney, in which you set forth that you claimed your interest in that property as an heir of Reinhold Sadler, deceased, and in which you authorized [18] Alfred Sadler, your brother, to represent you in that capacity?

Mr. Cooke: Show him the document. We object to that method of cross-examination.

Mr. Thompson: All right.

Q. Mr. Sadler, I show you Plaintiff's Exhibit 2 for identification, which purports to be a power of attorney to Alfred R. Sadler, has the signature of Edgar Sadler, acknowledged December 28, 1912, before R. McCharles, County Clerk, Eureka County, filed for record at the request of Edgar Sadler December 30, 1912, by Edgar Eather, County Recorder. Is that not your signature at the bottom of that power of attorney? A. I guess it is.

Q. Is it or isn't it, yes or no?

A. I guess it is.

Q. You think it is your signature? A. Yes.

Mr. Thompson: I offer the power of attorney in evidence, your Honor.

(Testimony of Edgar Sadler.)

Mr. Cooke: We, of course, object to the offer, if the Court please, on the ground it is irrelevant and immaterial and merely encumbers the record of the case with inconsequential matter. It purports on its face to be a power of attorney from Edgar Sadler to Alfred R. Sadler as trustee, to represent Edgar Sadler as an heir-at-law of the estate of Reinhold Sadler, with more particular reference to lands which [19] the Huntington & Diamond Valley Stock & Land Company holds under trust; the lands are situated in White Pine, Elko and Eureka Counties, State of Nevada, and then follows the usual stock provisions of a power of attorney, and it is signed by Edgar Sadler and recorded, as stated by counsel, at Edgar Sadler's request on December 30, 1912. The point of our objection is, your Honor, that all of these documents are antecedent documents to the proceedings of 1918, which resulted in the adjudication of the title to certain lands admittedly in the Huntington Company, notwithstanding whatever may have been claimed before that, and an adjudication in favor of Alfred and Edgar Sadler, unreservedly and unequivocally as to the Diamond Valley Ranch in Eureka County, makes unnecessary a consideration of what the parties said and did years before. This is six years before that, your Honor. Under ordinary rules all those are preliminary arrangements, preliminary claims and all that; whether they were made or not made would not be material. It is the question of the status of that ground and what was done in March, 1918, not what was done six years before or 30 years before, so far

(Testimony of Edgar Sadler.)

as that is concerned. I can't see that anything in this case would be any different from ordinary cases where all those matters would be merged. They might have made a claim; that wouldn't defeat the judgment of the court rendered on March 2, 1918. That judgment is final. Nobody pretends it is wrong, nobody pretends there is anything the [20] matter with it and by that adjudication title of this property is in Edgar and Alfred Sadler and the other heirs signed away all interest they had by the stipulation, Exhibit C, and it expressly provided in that stipulation, Exhibit C, that they had no interest in this property. That being the situation, what value is it to the Court in this case to go into the talk and chatter that was had many years before. That stipulation is attached to plaintiff's complaint, your Honor, the original complaint, and that is signed by Louisa and Bertha Sadler and Edgar, Alfred R. and Clarence Sadler and Alfred R. Sadler is attorney in fact, and then it is signed by the brothers, or at least some of them. It seems as though Currier & Castle didn't sign here but the firm of Van Fleet and Henderson signed as attorneys for the Huntington & Diamond Valley Stock & Land Company. Now that stipulation contains what seems to me to be peculiarly powerful language. It is stipulated by all these parties, Clarence Sadler included, if his power of attorney means anything.

"1. That it be adjudged and decreed that the defendants, Edgar Sadler and Alfred Sadler, are the owners and entitled to the posses-

(Testimony of Edgar Sadler.)

sion of all the property described in plaintiff's complaint, which is situate in the County of Eureka, State of Nevada, and known as the Diamond Valley Ranch, a more particular description of said property to be inserted in said [21] decree, their title thereto quieted, and that none of the other parties * * *"

That includes the plaintiff in this case:

"* * * none of the other parties to this action have any right, title or estate in said property, or any part thereof.

"2. That the plaintiff be adjudged the owner and entitled to the possession of all the rest of the lands and premises described in plaintiff's complaint, its title thereto quieted, and that none of the other parties to this action have any right, title or estate in said property, or any part thereof."

That would include Alfred and Edgar Sadler.

"3. That the defendants take nothing by their several counter-claims."

One of those counter-claims, I presume, is the complaint and the joint answer represented by Exhibit 1.

"4. That the money to be paid by the said Edgar Sadler and Alfred Sadler to the plaintiff as a consideration for this settlement and decree, shall be solely the obligation of said Edgar Sadler and Alfred Sadler, and that none of the parties hereto shall be in any wise personally liable therefor."

(Testimony of Edgar Sadler.)

That seems to be a clause that probably was suggested by the heirs or children or Reinhold Sadler. They wanted to be as [22] far removed from any liability, as completely free of any claim of interest, as language could possibly make them. Now, having signed that stipulation and decree, having entered upon it, that decree settling the question of ownership, of what use and aid is it to the Court to go back six or twelve years, or any number of years, to find out what John Smith claimed and John Jones denied.

The Court: If that is true, why do you deny ownership of this land in Reinhold Sadler at the time of his death?

Mr. Cooke: If what is true?

The Court: If you go back beyond 1918?

Mr. Cooke: I had to meet their allegation. They made the allegation in paragraph 2. That is why I had to do it.

The Court: That is one of the issues in this case and it may be a new principle. Is it the intention of counsel for the plaintiff to offer this power of attorney to meet in some degree the required proof of ownership of Reinhold Sadler in this property at the time of his death?

Mr. Cooke: We insist that the case must be decided upon the conditions as they were made to exist by that final decree and not prior to that time. The reason for the ownership [23] to Reinhold Sadler in 1906, your Honor, is readily explainable on another theory and that is that Exhibit "L"

(Testimony of Edgar Sadler.)

which, as put forth here as a trust agreement, provides for a division according to the will of Reinhold Sadler, so you would have to go back to that time. Of course, it raises also the question of whether there is any consideration for this trust agreement, but the claims and counter-claims and cross-claims of the parties with reference to this property, I think is merged in the decree to quiet title.

The Court: Objection will be overruled and Exhibit 2 for identification admitted in evidence as Plaintiff's Exhibit 2.

Mr. Thompson: Reading from Plaintiff's Exhibit 2:

“Know All Men By These Presents: That Edgar Sadler of Eureka, Eureka County, State of Nevada, by these presents appoints Alfred R. Sadler, as Trustee, a Resident of Reno, Washoe County, State of Nevada, attorney in fact, for him, and in his name, and for his use and benefit in all matters pertaining to his interest as an heir at law of the estate of R. Sadler, deceased, in general, and more particularly in reference to lands which the Huntington and Diamond Valley Stock and Land Company, a supposed California Corporation, holds under trust; the lands are situated in White Pine, Elko and Eureka Counties, State of Nevada.”

Q. I show you Plaintiff's Exhibit 3 for identification, Mr. Sadler, and ask you if you did not file

(Testimony of Edgar Sadler.)

that for record with the County Recorder of Eureka County, Nevada, on December 30, 1912?

A. Well, I don't know whether I did or not.

Mr. Cooke: Doesn't it show on the face, Mr. Thompson?

Mr. Thompson: It shows as follows: "Filed for Record at the Request of Edgar Sadler Dec. 30 A. D. 1912 at 15 min. past 7 o'clock a.m., and Recorded in Book A of Powers of Attorney, page 431 Eureka County Records. Edgar Eather Recorder," and if necessary we can have Supreme Court Justice Eather over here.

The Court: I don't think that is necessary. I think that is evidence itself.

Mr. Cooke: This is the official statement of the recorder?

Mr. Thompson: Yes. We offer Exhibit 3 in evidence, your Honor.

Mr. Cooke: If the Court please, this document seems to be a companion piece to Exhibit 2 and more or less identical.

Mr. Thompson: That one is signed by Clarence Sadler, Mr. Cooke, and not by Edgar.

Mr. Cooke: Oh yes, I see.

Mr. Thompson: We offer it, your Honor, for the purpose of showing that the family and heirs of Reinhold Sadler [25] were acting together as heirs with reference to this property.

Mr. Cooke: We object to it on the ground it is not admissible even for the purpose named by counsel, that it simply shows a transaction between

(Testimony of Edgar Sadler.)

Clarence Sadler and Alfred Sadler and is not joined in by any of the heirs; that it is hearsay as to the defendant, Edgar Sadler, and it is irrelevant and incompetent for any purpose whatever. It purports to be power of attorney from Clarence Sadler to Alfred to recover his interest in reference to land held under trust by the Huntington Land & Stock Company situated in White Pine, Elko and Eureka Counties and the balance of the form as found in the other one, but the point we make, your Honor, in this statement of Clarence Sadler in 1912 he had some interest in that ranch wouldn't tend to establish that he had an interest in it after March 2, 1918, or at any time, so far as that is concerned. It is not evidence against Edgar Sadler, wouldn't be evidence against Edgar Sadler if suit were brought immediate to the making of that document and quiet title in 1918 any more than if Edgar Sadler had gone up and down the streets in Eureka and proclaimed he was an interested party in that ranch.

The Court: I think it is admissible for the purposes stated by Mr. Thompson and especially so in connection with Exhibit 2. It is of like nature.

Mr. Thompson: I wish to call your Honor's attention to the fact that both were filed by Edgar Sadler at the same time, according to the endorsement.

The Court: They seem to have some connection, so that will be admitted in evidence as Plaintiff's Exhibit 3.

(Testimony of Edgar Sadler.)

Mr. Cooke: I expect it may be understood that all the rulings may be excepted to.

Mr. Thompson: I don't believe exception is necessary.

The Court: If it is, we can agree that counsel on both sides may have exceptions to any rulings of the Court.

Mr. Thompson: We so stipulate, your Honor.

Q. Who is Edgar Lane Plummer, Mr. Sadler?

A. He is a nephew of mine.

Q. He is the son of Wilhelmina Sadler Plummer, your deceased sister? A. Yes.

Mr. Thompson: I will offer in evidence next exhibit for identification. It is power of attorney, similar to the ones already in evidence, the endorsement showing that they were recorded by Edgar Sadler at the same time, this exhibit being signed by B. L. Plummer, as father and guardian of Edgar Lane Plummer. [27]

Mr. Cooke: We enter the same objection as to the other, on the ground that it is irrelevant and incompetent in that it is merely a statement in the nature of a power of attorney from one B. L. Plummer, described as being a guardian of Edgar Lane Plummer, a minor, of Eureka County, Nevada, appointing Alfred R. Sadler as trustee, a resident of Reno, Washoe County, State of Nevada, attorney in fact, for him and in his name and for his use and benefit and refers to his claims to the Diamond Valley Stock & Land Company Ranch and other property. The only connection that Edgar Sadler

(Testimony of Edgar Sadler.)

has with the document apparently is the fact that it was filed for record at his request. That, of itself, we submit, does not legally connect him with the document because a person can act as a mere messenger, such as attorneys frequently do or others, who carry papers in and they are filed with the recorder and the recorder marks on the outside that they were filed at the request of the party who handed them in, which is doubtless the usual practice and we make no complaint about that, but that does not make the contents of the document evidence against the party. I suppose your Honor in your practice, and I know I have and every attorney I guess, had occasion to file documents with the recorder that they did not know what the contents were. They are not chargeable as evidence against them 20 years later or at any time. That is all we have here. There is nothing to show that Edgar Sadler knew anything about the contents of the document and therefore we say it is hearsay as to the defendant. We repeat here the same objections that we have made to the previous offers. All of the claims of these parties, whatever they may have been, good, bad or indifferent, have been merged in the quiet title decree which adjudicated, upon the stipulation of all of these parties, that the title to this property on March 2, 1918, was exclusively in Alfred R. Sadler and Edgar A. Sadler, free and clear of any claim of any of these parties that are connected with these powers of attorney that we have been having here.

(Testimony of Edgar Sadler.)

The Court: The objection will be overruled and the exhibit is admitted in evidence as Plaintiff's Exhibit 4.

Q. Mr. Sadler, I show you Plaintiff's Exhibit 1, which is the answer in the quiet title suit that was brought in Elko County, and in order to refresh your recollection call your attention to the fact that the answer filed on behalf of you and your brothers, Alfred and Clarence, and your mother, was signed by Curler and Castle and Cheney, Downer, Price & Hawkins. Now isn't it true that at that time those two law firms represented you defendants in that case?

A. Yes, I guess it is.

Q. Alfred Sadler was living in Reno at that time, was he not, and he dealt principally with Cheney, Downer, Price & Hawkins?

A. Yes. [29]

Q. And you were living on the ranch in Eureka County and you would make trips into Elko to confer with the firm of Curler & Castle, is that true? A. Yes.

Q. Now the question of the settlement of the quiet title suit brought by the Huntington & Diamond Valley Land & Stock Company against you and members of your family came up in the latter part of 1917 and early in 1918, did it not?

A. I think so.

Q. And at that time did you not have occasion to make several trips to Elko to confer with the attorneys, Curler & Castle, regarding it?

A. No.

(Testimony of Edgar Sadler.)

Q. You did not? You stayed at the ranch in Eureka, is that right?

A. Most of the time. I went there a few times.

Q. With regard to the settlement of the quiet title case?

A. Well, it never amounted to anything.

Q. Well, the case was settled, wasn't it?

A. No, I never went afterwards.

Q. Before March 2, 1918, when a decree was entered, you did confer with your attorneys?

A. Yes, I came to Reno.

Q. And also in Elko? A. Yes. [30]

Q. I show you Plaintiff's Exhibit No. 5 for identification, which purports to be a letter dated Diamond Valley December 30, 1917. In whose handwriting is that letter? A. Mine.

Mr. Thompson: I offer the letter in evidence, your Honor.

Mr. Cook: Do you mind stating who this is supposed to be to? It says, "Dear Brother."

Mr. Thompson: It is supposed to be to Alfred.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of the letter identified by the witness and counsel's statement it is addressed to his brother Alfred Sadler, dated December 30, 1917, being marked Exhibit 5 for identification, on the ground that it is irrelevant and immaterial and does not constitute any evidence or does not prove or tend to prove any issue in the case. It merely encumbers the records of the court. It is a letter, generally speaking, mentions the suit

(Testimony of Edgar Sadler.)

that they had before Judge Breen with the jury of six and six and then the question of some leases that seems to have been paramount in their minds when he wrote the letter, talking about some leases, and then he wants to arrange so Cheney won't have to go out there to get Curler at Elko because that is less expensive. That is about all there is to that. I would like the record to show also that I make the same objection as to previous offers, that all [31] those matters are merged in the decree of 1918.

The Court: Objection overruled and exhibit admitted in evidence as Plaintiff's Exhibit 5.

PLAINTIFF'S EXHIBIT No. 5

Diamond Valley,
Dec. 30, 1917.

Dear Brother:

Received the gum and other thing all right and much oblg for same. Been busy. Going to town on a suit Domingo Rectune had with Sara. A trespass on the water of Vienna Creek and jury did no agree —6 & 6, under Breen. Instructions to jury he said the Deed to the Company was first and the leases did not Count and would not let my lease go as he I had not the right to lease with out a order from Court and the waterright and land belong to Company and not to the R. Sadler estate. So I do not know what they will do about it as it look thing are getting worse all the time. Had a letter from Cheney saying the other side, want to throw out

(Testimony of Edgar Sadler.)

the Counter Claim and I might have to go to Elko again as Curler is going to attend to it so there will not be so much expenses for us. As it takes lots of money to go and come on these suits now there going to be a suit for possesoun. But do not know where it will come off. Will write you again with a Happy New Year and hope thing will turn out all right.

Your Brother,
/s/ EDGAR.

[Endorsed]: Filed Oct. 14, 1946.

Q. I call your attention to the signature of Edgar on the back side of Exhibit 5, Mr. Sadler, is that your signature? A. That's mine.

Q. And this letter was written by you to your brother Alfred Sadler, was it not?

A. Yes, it was.

Q. I show you Plaintiff's Exhibit 6 for identification, which purports to be a letter dated at the Diamond Ranch January 16, 1918, addressed as "Dear Brother," in whose handwriting is that letter? A. This is mine.

Q. And the signature, "Edgar Sadler" at the bottom of the letter is your signature?

A. Yes.

Mr. Thompson: I offer the letter in evidence, your Honor, as Plaintiff's Exhibit 6.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of Exhibit 6 for

identification, on the ground that it is merely a statement from him to his brother, Alfred Sadler, in regard to some trespass suit and also in regard to consulting Judge Curler as to the counter-claims in the quiet title suit and in reference to his idea that it [32] would be better for them to buy this ranch, he and Alfred to buy the ranch for \$15,000 than it would be to go on with it and suggests he see Henderson and see what can be done. That is Henderson, attorney for the plaintiff. That is the gist of the letter and it contains nothing that would constitute any evidence in this case that he, Clarence Sadler, had any interest whatever in the ranch. It is a communication, so far as this purchase is concerned, from Edgar to Alfred Sadler that they buy the ranch. The ranch was bought by them and in their joint names, so that what may have been said or done between them, it seems to me it is no evidence whatever as to Clarence Sadler or the other heirs, unless they are mentioned, and they are not mentioned in any of these exhibits so far. We make the same objection here as we made to the other exhibits, that it preceded the final complete settlement of March 2, 1918, in which the stipulation settled the rights of everybody, and the decree that was entered pursuant to the stipulation, and that we are all foreclosed and precluded from going back of that, it not being material in any way.

Mr. Thompson: I might state the way you have explained that exhibit I should think you have no objection to its admissibility.

(Testimony of Edgar Sadler.)

Mr. Cooke: I don't want to butcher the paper in evidence.

The Court: The objection will be overruled and the [33] exhibit admitted in evidence as Plaintiff's Exhibit 6.

PLAINTIFF'S EXHIBIT No. 6

Diamond Ranch,
Jan. 16, 1918

Dear Brother:

I was up in Elko last week as Judge Curler sent for me to come up to fix some paper and keep me 4 day and did not fix any as he had to have another talk with Cheney about the brief he put in and they are going to talk on demurrer on the Counter Claims put in and will have to go up on Friday again. I think if we could get them to settle it would be better for us if we could do so. If we gave them \$15,000 we could sell the Henderson Ranch and get half, and mortage the ranch for about \$8,000 and be through as it will cost us a lot of money to fight them as they have all the papers. Will talk to Curler about it when I go up again. Now Kimball and Sara wants us to fight the suit they have with Domingo and that will take more money. So I am going to see what Curler & Castle can do with Herman. If we have to lose some money we are out and be done with it as the ranch is good for what we borrow on it till we pay it back. So write me to Elko by return mail what

(Testimony of Edgar Sadler.)

you think of it. Had a little snow up this way. Mining is on the bum up here. The companys ??? can not pay their men off and have shut down now. Address letter to Mayer Hotel Elko for I will be there till Sunday.

Your Brother,

/s/ EDGAR SADLER.

[Endorsed]: Filed Oct. 14, 1946.

Q. Mr. Sadler, Exhibit 6 is a letter which you wrote to your brother, Alfred Sadler, on January 16, 1918, is it not? A. Yes.

Q. I call your attention to the fact that in the letter you state as follows: "I think if we could get them to settle it would be better for us if we could do so. If we gave them \$15,000 we could sell the Henderson ranch and get half and mortgage the ranch for about \$8000 and be through as it will cost us a lot of money to fight them as they have all the papers. Will talk to Curler about it when I go up again. Now Kimball & Sard wants us to fight the suit they have with Domingo and that will take more money. So I am going to see what Curler & Castle can do with Herman." Herman Sadler was your father's brother, was he not?

A. No.

Q. Who is Herman Sadler?

A. A cousin of mine.

Q. And he was the principal party involved on behalf of the Huntington & Diamond Valley Land & Stock Company? A. He seems to be.

(Testimony of Edgar Sadler.)

Q. He represented it in the quiet title suit?

A. Yes.

Q. What was his full name? [34]

A. Herman J. Sadler.

Mr. Thompson (continues reading): "If we have to lose some money we are out and be done with it, as the ranch is good for what we borrow on it till we pay it back, so write me to Elko by return mail what you think of it. Had a little snow up this way. Mining is on the bum up here. The companies can not pay their men off and have shut down now. Address letter to Mayer Hotel Elko for I will be there till Sunday."

Q. I show you Plaintiff's Exhibit 7, Mr. Sadler, which purports to be a letter on the stationery of the Hotel Mayer, Elko, Nevada, addressed "Dear Alfred," in whose handwriting is that?

A. That's my handwriting.

Q. And the signature on the second page of the letter is your signature, Edgar? A. Yes.

A. Mr. Thompson: I offer the letter in evidence, your Honor. We intend to fix the date by reference to the exhibit just admitted which stated that the witness, Edgar Sadler, would be at the Hotel Mayer, and also by the subject matter of the letter. We do not have the exact date, but the approximate date.

Mr. Cooke: What do you call approximate date?

Mr. Thompson: The preceding letter was dated January [35] 16, 1918 and he said he would be at the hotel there for the next few days.

Mr. Cooke: Well, I would like to have that date

(Testimony of Edgar Sadler.)

fixed, because he could have been at the Hotel Mayer a hundred times after that, but we don't make any point on that, your Honor. We do object to it on the ground it is irrelevant and immaterial and does not tend to show that Clarence Sadler had any interest whatever in this property. It is simply a letter between Alfred and Edgar Sadler in regard to the desirability of their raising \$15,000 to get this ranch and settle the litigation. That is all it purports to be. And we make the same objection, that all these transactions before the decree and stipulation of 1918 are merged in that decree and hence they are irrelevant and immaterial.

The Court: Same ruling.

Mr. Thompson: On thing I would like to point out, your Honor, under the power of attorney in evidence, that Alfred Sadler was representing Clarence Sadler as attorney at that time, as attorney in fact.

The Court: Admitted in evidence as Plaintiff's Exhibit 7.

[Letterhead Hotel Mayer, Elko, Nevada]

PLAINTIFF'S EXHIBIT NO. 7

Dear Alfred:

Drop you line today, as we have agreed to pay them \$15,000 taken Diamond Ranch. Now we will have to get Bertha and mother to sign deed to that

(Testimony of Edgar Sadler.)

effect, that they get a clear title he does not want anything that does not belong to the Company. Will be in Reno. as soon as I can get home and fix up thing up so as I can come down and then we will take Cheney up to Carson and get it done right. So expect me any time.

Your Brother,
/s/ EDGAR.

[Endorsed]: Filed Oct. 14, 1946.

Mr. Cooke: We deny that there is anything in there to show that he was acting as attorney in fact.

The Court: We will take our recess now until two o'clock.

(Recess taken at 12:00 o'clock.)

Afternoon Session—October 14, 1946
3:00 P.M.

MR. EDGAR SADLER

resumed the witness stand on further examination by Mr. Thompson.

The Court: You may proceed, Mr. Thompson.

Mr. Thompson: At the time of the recess, your Honor, Exhibit 7 had just been admitted in evidence.

Q. Mr. Sadler, Exhibit 7 is a letter written by you to your brother, Alfred Sadler, is it not?

A. Yes.

(Testimony of Edgar Sadler.)

Q. And your brother Alfred was in Reno, Nevada at that time? A. Yes.

Mr. Thompson: The letter is on the stationery of Hotel Mayer, Eureka, and reads:

“Dear Alfred. Drop you line today as we have agreed to pay them \$15000 taken Diamond Ranch * * *.”

By that did you mean that you had agreed to pay the Huntington & Diamond Valley Stock & Land Company \$15,000? A. Yes.

Q. And that you were taking the Diamond Ranch, is that correct? A. Yes.

Mr. Thompson (Continues reading): “Now, we will have to get Bertha and mother to sign deed to that effect, that they get a clear title.” [37]

Q. By that, “they get a clear title,” did you refer to the Huntington & Diamond Valley Stock & Land Company?

Mr. Cooke: May the objection we have heretofore made about Alfred Sadler to Exhibits 7, 6, 5, 4, and 3 that these negotiations were preceding that decree made March 2, 1918, and are merged in that decree, may that be deemed to go to all this same type of testimony? You are now cross-examining on the contents and we want the objection to apply to that.

The Court: It may be so understood. The objection will be overruled.

Q. Where you say that they get a clear title, to whom do you refer by the word “they?”

A. That means Alfred and I.

(Testimony of Edgar Sadler.)

Q. That you get a clear title? A. Yes.

Q. Now it says: "He does not want anything * * *," who is "he?" "He does not want anything that does not belong to the company." Weren't you referring to Herman J. Sadler?

A. I think so.

Q. "* * * that doesn't belong to the company"; by "company" do you refer to the Huntington & Diamond Valley Land & Stock Company?

A. Yes, that's right.

Q. The balance of the letter states: "Will be in Reno as [38] soon as I can get home and fix up things up so as I can come down and then we will take Cheney up to Carson and get it done right, so expect me any time. Your Brother Edgar." Now at that time your mother, Louisa Sadler, and your sister, Bertha Sadler, were living in Carson City, Nevada, were they not? A. Yes.

Q. Now do you recall, Mr. Sadler, that on March 2, 1918, the decree was entered in the quiet title suit at Elko? You recall that, do you not?

A. Yes.

Q. And you also understand that the plaintiff, Clarence Sadler, has alleged in his complaint that a written agreement made in March 2, 1918, was signed by yourself and by Alfred Sadler and that a copy of that agreement was attached to the complaint, do you recall that?

Mr. Cooke: What complaint?

Mr. Thompson: Our complaint in this case.

Mr. Cooke: You are asking about the agreement. Let counsel show the witness what he is interrogating him about.

(Question read.)

Q. —in this case.

The Court: He can answer that question. Objection will be overruled. Do you understand the question, Mr. Sadler? [39]

A. After this suit was started?

Q. Yes. Could I have the complaint, your Honor?

The Court: Yes.

Q. Now I am asking you, Mr. Sadler—this is complaint filed in this case by Clarence Sadler against you and in the complaint Clarence Sadler has alleged that you and Alfred signed Exhibit "L" attached to the complaint, which is an agreement dated March 2, 1918. You understand that?

A. Yes.

Q. What that agreement is. You have seen it, I assume, in Mr. Cooke's office? A. Yes.

Mr. Cooke: That isn't correct. He hasn't seen the agreement.

Q. You have seen the complaint?

Mr. Cooke: Seen a photostatic copy.

Q. You have also seen photostatic copy of the agreement which I furnished to Mr. Cooke at his request? A. Yes.

Q. In your answer filed in this case, Mr. Sadler, Paragraph 6, line 30, page 2, and lines 1, 2, and 3 of page 3 of the answer you said: "The defendant

(Testimony of Edgar Sadler.)

denies that thereafter, or at all, a written memorandum of said alleged trust agreement was executed by the said Edgar A. Sadler as alleged, or at all." Now that refers to Exhibit "L" that I just showed you. [40] Now at this time do you deny that you signed such an agreement?

A. Never signed anything.

Q. And you deny that you signed the agreement, a copy of which is attached as Exhibit "L" to the complaint? A. Never signed nothing.

Q. You deny that you signed that agreement?

A. Yes.

Mr. Cooke: I must insist that you show him the agreement.

Q. I show you Plaintiff's Exhibit 8 for identification—

A. That is the same one that I said I didn't sign at all. I didn't know nothing about that. I haven't seen anything like that until I come up here, until Mr. Cooke sent it to me; I never seen it at all.

Q. You have never seen Exhibit 8 before?

A. No.

Q. I call your attention to the signature, "Edgar Sadler," at the bottom of Exhibit 8. Is that your signature? A. It might be and it might not.

Q. Did you write "Edgar Sadler" at the bottom of Exhibit 8?

A. I don't know whether I did or not.

Q. Will you testify definitely that you never saw this before?

(Testimony of Edgar Sadler.)

A. No, I never seen that before.

Q. Did you write "Edgar Sadler" at the bottom of that agreement? A. No. [41]

Q. Mr. Sadler, I show you Plaintiff's Exhibit 9 for identification, which purports to be a power of attorney signed by you directed to Alfred R. Sadler as your attorney in fact, acknowledged December 26, 1924, before R. McCharles, county clerk and filed for record at the request of Alfred R. Sadler by C. F. Riley, recorder. Is the signature at the bottom of that power of attorney your signature?

A. Yes.

Mr. Thompson: I offer Exhibit 9 for identification in evidence, your Honor. Offer it as a handwriting exemplar.

Mr. Cooke: As long as it is limited solely to being an exemplar of handwriting it may be admitted in evidence. No objection to that.

The Court: That is one objection I would have sustained if you had made one. I can't see the purpose of it.

Mr. Thompson: It is a handwriting exemplar, your Honor, to use as comparison.

The Court: You haven't offered any exhibit yet.

Mr. Thompson: I can't offer it yet, your Honor, it hasn't been proved.

The Court: Exhibit 8?

Mr. Thompson: Yes.

Mr. Cooke: I have no objection for the purposes stated.

The Court: It may be admitted in evidence as Exhibit 9. [42]

(Testimony of Edgar Sadler.)

PLAINTIFF'S EXHIBIT No. 9

Know All Men by These Presents:

That I, Edgar Sadler, for myself and as a lawful heir of Reinhold Sadler; Louisa Sadler and Bertha Sadler, all Deceased, a resident of Eureka, Eureka County, State of Nevada, have made, constituted and appointed, and by these presents do make, constitute and appoint Alfred R. Sadler, a resident of Reno, Washoe Co., Nevada, my true and lawful attorney, agent and my attorney in fact, for me and in my name, place and stead and for myself use and benefit, to ask, demand, sue for recover sue for, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands, whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me from said estates and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof by attachment, arrest or otherwise, and to compromise and agree for the same, and discharges for the same, for me and in my name, to make and deliver; contract for, purchase, receive and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, let, sell release, convey, mortgage and hypothecate, lands, tenements and hereditaments upon such terms and conditions, and under such covenants as he shall think fit. Also to bargain for, buy, sell, mortgage, hypothecate, and in

(Testimony of Edgar Sadler.)

any and every way and manner, deal in and with goods, wares and merchandise, choses in action and other property in possession or in action, and to do every kind of business of what nature or kind soever, and also for me and in my name, and as I myself would act and deed to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary. That said Alfred R. Sadler be allowed to serve without bonds in regard to settlement of said estates of Reinhold Sadler, Louisa Sadler and Bertha Sadler, all Deceased. [69]

Giving, unto Alfred R. Sadler said attorney full power to perform every act and thing which he may think necessary to be done in and about the estates, as fully to all intents and purposes as I might or could do if personally present hereby ratifying and confirming all that Alfred R. Sadler, said Attorney, shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand
the day of one thousand nine hundred
and

Signed and Delivered in the Presence of
/s/ EDGAR SADLER.
[Seal] /s/ R. McCHARLES,

(Testimony of Edgar Sadler.)

State of Nevada,
County of Eureka—ss.

On this 26 day of July, A.D. 1924, personally appeared before me, R. McCharles, County Clerk, and ex-officio Clerk of the Third Judicial District Court of Nevada, in and for said County, Edgar Sadler, known to me to be the person described in and who executed the annexed instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand officially and affixed the Seal of the said District Court, the day and year in this certificate first above written.

[Seal] /s/ R. McCHARLES,
County Clerk and ex-officio Clerk of the Said Third
Judicial District Court, Eureka County.

By
Deputy.

Pd. 2.45

Power of Attorney from Edgar Sadler to Alfred
R. Sadler. Dated, A.D. 19....

Filed for Record at the Request of Alfred R.
Sadler, Mar. 24, A.D. 1925, at 12 min. past 10 o'clock

(Testimony of Edgar Sadler.)
 a.m., and Recorded in Book of Powers of Attorney Plats & Misc., Page 363.

.....
 County Records.

/s/ C. F. RILEY,
 Recorder.

By
 Deputy Recorder.

File No. 55

Filing for record.....	.25
2 indexing at 50c.....	1.00
4 folios at 30c.....	1.20

	\$2.45

[Endorsed]: Filed Oct. 14, 1946.

Q. Mr. Sadler, I show you Exhibit 10 for identification, which is a check dated February 21, 1923, payable to Edgar Sadler in the sum of \$100, signed Alfred R. Sadler, bears the endorsement, "Edgar Sadler." Is the endorsement on that check, "Edgar Sadler," your signature? A. Yes.

Mr. Thompson: I offer Exhibit 10 in evidence, your Honor, as a handwriting exemplar.

Mr. Cooke: For that purpose only?

Mr. Thompson: Yes.

The Court: It may be admitted for that purpose.

(Testimony of Edgar Sadler.)

Q. I show you another check, Mr. Sadler, Exhibit 11 for identification, which bears the endorsement, "Pay to the order of the Washoe County Bank. Edgar Sadler," is the endorsement in your handwriting? A. Yes.

Q. Yes? A. Yes, sure.

Mr. Thompson: I offer Exhibit 11 for identification in evidence.

Mr. Cooke: That is offered for the same purpose?

Mr. Thompson: Yes.

Mr. Cooke: No objection.

The Court: Admitted in evidence. [43]

Q. I show you Plaintiff's Exhibit 12 for identification, Mr. Sadler, another check dated January 28, 1925, bears the endorsement "Pay to the order of the Washoe County Bank Edgar Sadler," is the endorsement on that check in your handwriting?

A. Yes, that's mine.

Mr. Thompson: I offer Exhibit 12 for identification in evidence, your Honor, as a handwriting exemplar.

Mr. Cooke: For that purpose only?

Mr. Thompson: Yes.

Mr. Cooke: No objection.

The Court: It may be admitted in evidence as Exhibit 12.

Q. I show you Exhibit 13 for identification, Mr. Sadler, which is another check to your order, dated June 29, 1923, bears the endorsement, "Pay to the

(Testimony of Edgar Sadler.)

order of the Washoe County Bank. Edgar Sadler," is the endorsement on that check in your handwriting? A. Yes.

Mr. Thompson: I offer Exhibit 13 for identification in evidence as a handwriting exemplar.

Mr. Cooke: On the same condition as the others?

Mr. Thompson: That is the only purpose.

Mr. Cooke: No objection.

The Court: Exhibit 13 may be admitted in evidence.

Q. I show you Exhibit 14 for identification, Mr. Sadler, which [44] purports to be a letter dated at Eureka, Nevada, April 18, 1923, addressed "Dear Alfred," in whose handwriting is that letter?

Mr. Cooke: If you know.

A. Oh, that's my writing.

Q. Is the signature, "Edgar Sadler," your signature? A. Yes.

Q. Written by you? A. Yes.

Mr. Thompson: I offer Exhibit 14 for identification in evidence.

Mr. Cooke: Same purpose?

Mr. Thompson: As a handwriting exemplar and also for any other materiality it may have. It is a letter to Alfred Sadler, refers to the ranching business and borrowed some money.

Mr. Cooke: The offer is objected to as being irrelevant and incompetent on the questions in this case. It is a business communication between one co-tenant and the other co-tenant, purporting to be grantees in the deed of the decree of March 2,

(Testimony of Edgar Sadler.)

1918, and that it does not contain anything that would throw any light upon the claims of the plaintiff in this case as being interested in the property mentioned in the letter or in the property described in the complaint involved in this case. [45]

The Court: Objection will be overruled and the exhibit admitted in evidence as Exhibit 14.

PLAINTIFF'S EXHIBIT No. 14

Eureka, Nevada
Apr. 8, 1923

Dear Alfred:

Drop you a line today as I told the parties about the house and he said he would take it and deposit a \$100 down and as soon as he got off the Jury would fix the other up. Now I want you to go to the Bank and ask them to give us a little more time till this fall so I can sell some of the cattle off as will have to sell about \$4,000 or \$6,000 off. As money is hard to get in the spring but will send them \$1700.00 as soon as I get the house business fix up. So do that and see that they say and let me know.

Your Brother,
/s/ EDGAR SADLER.

[Endorsed]: Filed Oct. 14, 1946.

Mr. Thompson: We have a witness here from Berkeley, your Honor, and at this time, with the Court's permission, we would like to interrupt the cross-examination of Mr. Sadler as an adverse party and put that witness on.

Mr. Cooke: No objection.

The Court: You may do so.

DR. PAUL F. KIRK

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thompson:

Q. Will you state your name, please?

A. Paul F. Kirk.

Q. Where do you live, Mr. Kirk?

A. Berkeley, California.

Q. What is your profession?

A. Professor of bio-chemistry, University of California; professor in criminology at the same institution.

Q. What is your education in that field?

A. I have taken three degrees, bachelor's degree at Ohio State University in chemistry, Master's Degree at the University of Pittsburgh, likewise in chemistry, and Doctor of Philosophy at the University of California in bio-chemistry.

Q. How long have you been employed at the University of California [46] at Berkeley, California, as a professor?

(Testimony of Dr. Paul F. Kirk.)

A. I have been employed there continuously since 1925 with the exception of three of the war years and for a period since 1935 in teaching of criminology and testing of physical evidence.

Q. What fields of criminology have you been teaching at the University?

A. I teach primarily microscopy and its application in the study of physical evidence, including documents and other matters similar to that which includes physiological fluids and other things.

Q. In the course of your work do you engage in handling comparisons? A. I do.

Q. And also do you examine documents for the purpose of determining whether the handwriting or signatures on them are forged or genuine?

A. I do.

Q. How long have you been engaged in that type of work? A. Since about 1935.

Q. Have you ever qualified as an expert witness on the question of documents and in the comparison of handwriting in courts of general jurisdiction in the United States?

A. I have qualified in both federal and State courts and in the examination of documents. [47]

Q. And during the past year, for example, how frequently have you been called as an expert witness to testify with regard to such matters?

A. I imagine approximately a dozen times, that is, on documents. More than that on other material, other matters.

(Testimony of Dr. Paul F. Kirk.)

Q. Did Mr. Clarence Sadler and myself meet you in Berkeley, California, in July of this year?

A. You did, on July 17th.

Q. I show you Plaintiff's Exhibit 8 for identification, Plaintiff's Exhibit 2, Plaintiff's Exhibit 9, Plaintiff's Exhibit 5, Plaintiff's Exhibit 6, Plaintiff's Exhibit 7 and Plaintiff's Exhibit 13, Plaintiff's Exhibit 12, Plaintiff's Exhibit 11, and Plaintiff's Exhibit 10. Have you seen those before Dr. Kirk? A. I have examined these documents.

Q. Where did you examine them?

A. My laboratory at Berkeley.

Q. That was July of this year?

A. July of this year, that is correct.

Q. Did you cause photographs to be made of the signatures on those several exhibits which I specified? A. I did.

Q. Do you have those with you?

A. I have. The top photograph is that of the questioned document, the agreement of March 2, 1918. [48]

Q. The top signature there is a photograph of the signature of Plaintiff's Exhibit 8 for identification, is that correct?

A. That is correct. The other 10 are the exemplars which are on the desk before me. I will identify each of them individually. The top exemplar is a letter Eureka, Nevada—that letter does not seem to be here.

Q. I show you Plaintiff's Exhibit 14, is that also one of the documents you examined at Berkeley?

(Testimony of Dr. Paul F. Kirk.)

A. That is correct. That is the one from which the signature is reproduced on top for exemplar signatures.

Q. There is a label E-3 on that exemplar.

A. The next one down is letter with the Diamond Ranch heading of January 16, 1918. It is Exhibit No. 6. The third one down—

Q. Just a moment. Exhibit 6 is labeled E-4 on the photograph enlargement of the signature?

A. That is correct. The third one down is the letter, Plaintiff's Exhibit No. 5 and it is labeled E-6 on the photograph. The fourth one down is power of attorney, 1912, which is Plaintiff's Exhibit No. 2. The fifth one is power of—I am mistaken on that—the third one is power of attorney—

Q. Will you refer to it by the label number?

A. Yes. E-6 is Plaintiff's Exhibit No. 9. E-7 is Plaintiff's Exhibit No. 2. E-8 is a check, Plaintiff's Exhibit No. 10. E-9 is a check, Plaintiff's Exhibit No. 13. E-10 is Plaintiff's [49] Exhibit 12. E-11 is Plaintiff's Exhibit 11. E-1, which is out of order because of the size of the signature, is Plaintiff's Exhibit No. 7, and E-5, which is also out of order because of its size, is Plaintiff's Exhibit No. 5. They are all complete.

Q. Dr. Kirk, Plaintiff's Exhibit No. 15 for identification is a pasteboard card which bears photographic enlargements of the signature of Edgar Sadler, is that correct? A. That is correct.

Q. And the numbers E-1-2-3, etc., which you used in your testimony, refer to stickers and the

(Testimony of Dr. Paul F. Kirk.)

numbers placed on the stickers on each one of the photographic enlargements of Exhibit 15 for identification? A. That is correct.

Mr. Thompson: I offer Exhibit 15 in evidence, your Honor.

Q. (By Mr. Cooke): You testified that you qualified as an expert witness, I think, in handwriting, I think, in some dozen cases?

A. Some dozen this year.

Mr. Thompson: If the Court please, I do not think I ask any question that calls for any voir dire examination at this time.

The Court: I think Mr. Cooke is entitled to ask such questions before this is admitted. [50]

Mr. Thompson: All right, your Honor.

Q. (Mr. Cooke): What was your answer?

A. I said the answer referred to this year.

Q. About a dozen this year?

A. Approximately a dozen this year; I don't know the exact number.

Q. What court or what State? Tell us what court it was that you qualified the last time.

A. The last time was the federal court in San Francisco. That was last week. I have qualified more commonly in Alameda County courts in Alameda County.

Q. What case in federal court? What was the title?

A. It was Hitchcock vs. Southern Pacific.

Q. Which side were you called on?

A. Southern Pacific.

(Testimony of Dr. Paul F. Kirk.)

Q. What was the result in that case?

A. I have not heard yet. It wasn't through when I was through testifying and I haven't had time to inquire.

Q. What about the case before that?

A. The case before that was in connection with a will, in which a woman was accused of forging a will.

Q. What was the title of the case if you recall?

A. It was People vs.—the name has slipped me and I can't think of the defendant's name.

Q. In the State court?

A. In the State court, yes, in Alameda County.

Q. Which side were you called on as witness there? A. Prosecution side.

Q. What was the result in that case?

A. The woman was convicted for forging the will.

Q. Where before that, where did you qualify as an expert in handwriting?

A. I can't recall the order of cases. I testified in a number of will cases in recent times. I testified for a number in which there were suits involving the Southern Pacific Company. I have handled their documents for a number of years, the key system likewise, but I don't recall the order of the cases.

Q. But tell us about the cases you do recall, whether given in regular order or not.

A. For example there was one case in which there was a woman, Mrs.—I can't remember the

(Testimony of Dr. Paul F. Kirk.)

name, my memory is very, very poor—is being sued for a bill, \$2500. In that case both her handwriting and the way in which certain writing was put on the document was involved. Her signature appeared under a promissory note that was typed on the bill and it was possible for me to show in that case that the typing had been placed there after the signature, so that she had not signed the promissory note.

Q. What was the title of that case, do you remember, Doctor?

A. That was somebody or other vs. Hilda Corlin Oschner. The plaintiff was a dentist whose name I have forgotten. That was [52] some years ago.

Q. What county?

A. Alameda Superior Court.

Q. Which side called you as a witness?

A. For the defense.

Q. What was the result?

A. We won the case. The decision was for the defense.

Q. For Mrs. Oschner? A. Yes.

Q. Are there any more cases you have in mind now?

A. Let us see—I was called in one in the federal court. I went in the court room. I didn't have to testify in that one—about a year ago. The Southern Pacific Company was defendant in the suit for damages, rather for back pay, and I was prepared to testify in that one but it wasn't necessary because the judge found for the Southern Pacific before it was necessary to testify.

(Testimony of Dr. Paul F. Kirk.)

Q. Did that involve forgery?

A. No, I was testifying on an anonymous letter in that case. I could have shown that the anonymous letter was written by the plaintiff in the action.

Q. About how many years does your experience extend over, when you first began?

A. More or less continuously since 1935.

Q. How old a man are you? [53]

A. I am 44.

Q. Was July 18th, when Mr. Clarence Sadler and Mr. Thompson contacted you in regard to this matter, was that the first knowledge you had of this matter?

A. On July 17th was the first knowledge I had with the case, yes.

Q. You hadn't discussed the matter with Mr. Clarence Sadler before that?

A. No, never met Mr. Clarence Sadler.

Q. You knew nothing about the case?

A. I didn't even after I talked to him. He merely asked me, "Is this signature genuine or not?"

Q. And they explained to you that signature was genuine?

A. No, they didn't explain. I didn't know whether they hoped it would be genuine or not genuine.

Q. Did you do the photographic work yourself or was that done by somebody else?

A. It was done under my direction and super-

(Testimony of Dr. Paul F. Kirk.)

vision but was done actually by another man who has better equipment than I had to do it. I was present when it was done.

Q. You had the original document, or purported to be the original document, did you not?

A. I had the same document which appeared on the table.

Q. This one here marked Plaintiff's Exhibit 8, I think, for identification? [54]

A. Correct.

Q. Was it necessary for you, or did you determine for yourself, who wrote the body of the document?

A. I wasn't asked to study that matter. However, I noted that it was written not by Edgar Sadler, but by Alfred.

Q. Apparently the body of it is in the handwriting of Alfred Sadler? A. Yes.

Q. You did not reach any conclusion, did you, Doctor, as to whether what you believe is the genuine signature of Edgar Sadler, whether that was put there at any particular time, either before or after the body of the document was written?

A. No, I reached no particular conclusion on that. The ink is rather old and it has darkened with age and the appearance of it is similar to the remainder of the document, not identical, similar, more heavy, but I am certain it is not a very recent signature, but I couldn't say how old it is.

Q. Is there anything in that document that would enable you to say whether or not the signa-

(Testimony of Dr. Paul F. Kirk.)

ture of Edgar Sadler is with the same ink as the signature of Alfred Sadler?

A. I did not study that question conclusively. It looks to be the same ink but I didn't apply a chemical test.

Q. That is blacker, isn't it, Doctor?

A. Yes, it is a little darker, a little more heavier written.

Q. In addition to being heavier written, isn't there something [55] about it that indicates the ink was blacker than the ink used in the signature of Edgar Sadler?

A. It could be blacker. Of course, that question doesn't seem to be pertinent, because it might have been signed with different ink or pen, even though it was signed at the same time.

Q. You were not requested to examine anything in regard to the document other than to determine from exemplars that were furnished to you whether, in your expert opinion, the name Edgar Sadler on this questioned document was, in your judgment, genuine or not?

A. That is correct. That is, whether it was the same person who wrote these others or not.

Q. That was the only thing you were requested to do?

A. The only thing I was requested to do.

Q. You have referred to some five or six or more exemplars that were handed to you as being the genuine signatures of Edgar Sadler and you have used those in connection with your work?

(Testimony of Dr. Paul F. Kirk.)

A. They were given to me as genuine signature. I have no knowledge.

Q. I understand. Did you get any other documents purporting to be genuine signatures of Edgar Sadler, other than those you used and testified to today?

A. I had one photographic copy of a document, I think it was [56] an agreement, and I examined that also, but the photograph was reduced considerably and it was not a very good photograph, so I did not copy it for this purpose. I did not see the original document, merely a photograph.

Q. Was that a one-page affair or two pages?

A. I do not recall now whether one or two. It was two, that's right.

Q. Do you recall any other signature on that document besides this Edgar Sadler?

A. No, I don't, at the time when I saw it.

Q. Was that the only reason you did not make an enlargement of that one?

A. The only reason, because it was a poor print. As a matter of fact the signature agrees with the others and with the questioned documents.

Q. Counsel has handed me a photostat of a letter. I will show it to you and ask you if that is the one that you refer to there?

A. Yes, that is the one. Note that signature, Edgar Sadler, the whole document, has been reduced and that signature is quite small and did not reproduce comparatively well.

Mr. Thompson: Do you have any objection to this being admitted in evidence as a handwriting

(Testimony of Dr. Paul F. Kirk.)

exemplar? It is a photograph of the stipulation dated February 14, 1918, in the quiet title suit in Elko County. [57]

Mr. Cooke: No objection. The document itself is already before the court as part of the pleadings. If you want it in, I am perfectly willing. The witness may refer to it and identify it.

Mr. Thompson: I offer the photographic copy of the stipulation in evidence, your Honor, as Exhibit 16.

Mr. Cooke: No objection. I presume that is in connection with his testimony?

Mr. Thompson: The body of it has been admitted.

A. I wasn't asked whether I thought that signature was genuine. It may be an admission which should go in the record.

Mr. Thompson: I have not had a chance to question you yet, Doctor.

The Court: Admitted as Exhibit 16.

Q. (Mr. Cooke): Then aside from Exhibit 16 which you just saw, you have no other papers purporting to be exemplars of Mr. Edgar Sadler's signature, other than those you already mentioned?

A. I had no others except those, no. That is the entire list.

The Court: Exhibit 16 will be admitted in evidence.

Mr. Thompson: For the purposes of illustration, your Honor.

The Court: We will be in recess for about 10 minutes. [58]

4:10 P.M.

DR. KIRK

resumed the witness stand on further direct examination by Mr. Thompson.

Q. Dr. Kirk, referring to Exhibit 8, which is the questioned document, Exhibit 8 for identification, and Plaintiff's Exhibits Nos. 2, 5, 6, 7, 9, 10, 11, 12, 13 and 16, 16 being the photographic copy of the stipulation dated February 14, 1918, did you examine those for the purpose of forming an opinion as to whether the signature, Edgar Sadler, appearing on Exhibit 8 for identification was in the same handwriting as the signatures appearing on the other exhibits I have specified?

A. I did so examine it.

Q. What is your opinion?

A. I concluded that it unquestionably is written in the same hand as the exemplars believed to be genuine.

Q. Will you state on what facts appearing from those exhibits you base that opinion?

A. I base that opinion on a number of points of view. In the first place, where it is forged it would be either traced, drawn or written freely. Examination under the microscope of the line formation of the questioned signature shows it was written absolutely freely and with as much facility as the signatures in the exemplars. The only thing that might incline one to any opposite view would be a slight feathering of the ink on the "l," "e" and "r"

(Testimony of Dr. Kirk.)

at the end. Those letters [59] were particularly examined and evidently there was a little dirt on his pen because the nib strokes are particularly smooth and regular, so it was not traced or drawn, since tracing and drawing will invariably show hesitations and spaces, wobbles, wavers, etc. Then if it was written freely, the question is did the same letter form and some individual characteristics as the genuine writing, as shown in the exemplars, comparison of letter forms show any significance differences, because the questioned letters, or letters of the questioned signature, are bracketed completely by corresponding letters in the exemplars. In addition to that, the individual characteristics of the writer were apparently identical. The skill, speed, ease, etc., are about the same. I would say that the writer of these signatures was not a good penman. He was evidently a person who did not write a great deal or had not been thoroughly trained in writing, so that his writing is quite irregular and not very skilful. The significant points of the letter forms is a strong tendency toward pointing of hooks and loops, for instance, which is something the writer would not normally be conscious of, as shown very strongly in the "e," first capital "E." The lower hook is almost identical throughout, occasionally rounded, ordinarily tends to point. The "d" stroke up is quite characteristic. It is a strong stroke at an angle and you notice it throughout the exemplars and the questioned with [60] the exception of one or two. The E-7, which is the earliest exemplar I

(Testimony of Dr. Kirk.)

have, 1912, does not show it, but in general it is quite definite throughout. A strong tendency to loop shows in the questioned "d" and also in several other "ds," including 8, particularly 9, 10, and 11 and some of the d's in Sadler, also in Exhibit 9, E-7 and E-6.

Mr. Cooke: What is shown?

A. The looping of the "D," an insertion of a loop instead of retrace. The position of the "d" and "g," I think, is rather significant. The "d" somewhat overshadows the "g" in every case. They are also crowded together. That is a little idiocy of which the writer would not normally be aware. In general most of the letters are spaced rather widely apart, but the "D" and "g" are an exception and there is a tendency for the "l" and "e" in Sadler to be crowded. The "a's" are perhaps the most variable in the group. The "l," with only one exception, is a considerably taller loop than the "d" loop, quite noticeable in the questioned and all but in one exemplar and this is the one in which the pen wasn't working well, which is E-11. Even the terminals are about as nearly alike as you could expect to get and tend to be more or less horizontal terminals. The general characteristics of both the letters and of the spacing and the small individual characteristics I would say are so nearly alike that there is virtually no possibility whatsoever of any one having written [61] that except the same person.

Q. By that you mean the same person who wrote all the exemplars?

(Testimony of Dr. Kirk.)

A. Who wrote all the exemplars. There are many variations throughout the exemplars. The writing is not uniform at all. The form of the "s" is extremely varied. It is the same type of "s" in all these exemplars, though there is one exception in these letters, but the more or less figure "8" type of letter is shown in at least four of these exemplars and it is well bracketed. It is not the most common type of "s." So much variation. The "r" is another one—looks like an undotted "i." It is not too uncommon, but nevertheless completely consistent throughout both the questioned and the exemplars.

Mr. Thompson: You may cross-examine.

Cross-Examination

By Mr. Cooke:

Q. You mentioned derogations. Can you point out any derogation between the questioned signature and the exemplars?

A. Well, I can point out between the questioned signature and certain exemplars, yes. There are no two signatures here which are identical, for the very obvious reason that people cannot make two signatures identical except by the very most remarkable chance.

Q. I do not care to argue that matter with you, but take, for [62] instance, the questioned signature, you referred to the terminal, didn't you?

A. I mentioned the terminal, yes.

Q. That is one of the points of comparison that

(Testimony of Dr. Kirk.)

you base your conclusion on that the same person wrote this that wrote the exemplar?

A. I mentioned there is a little difference as to one letter but it also shows in the exemplar.

Q. To what degree would you say that has any similarity whatever to the questioned?

A. It is somewhat similar in shape. I mean it has one of these rather short, more or less variable terminals.

Q. I am asking about this one. Do you say that has anything you can base your conclusion on that the same person wrote this letter that wrote the exemplar?

A. Oh, I certainly wouldn't know. The shape of the last stroke is the same but the terminal itself is different.

Q. Well, then, coming down to your next one, No. 4 on your photograph, would you say there is anything there in the terminal upon which you could base a conclusion that the same person wrote the questioned document?

A. No, I wouldn't base any conclusion on that terminal either.

Q. Well, here is one down here, E-10. You would give the same answer to that, would you not?

A. I pointed out that these terminals are quite variable and [63] that one terminal in the questioned document ended with a pen lift, the other one did not, and that one, simply because it is somewhat different from most of the terminals in the exem-

(Testimony of Dr. Kirk.)

plar, I was interested in finding whether it was disconnected in the exemplar and it is rather definitely disconnected in this one, E-11.

Q. I am asking about certain particular ones.

A. I do not base identity of the writing on the terminals. I merely mention that as one point that had to be accounted for.

Q. In your judgment that is not a very strong point supporting your conclusion?

A. No, merely it is not an adverse point, that is what I mean by that.

Q. You found some not at all similar to the terminal in the questioned and some are?

A. I find more are not similar than are, but there are some—

Q. What other derogation did you find when you came to compare your conclusion on the matter?

A. Well, there is a little bit less tendency to make pointed loops on the questioned signature than on many of these other signatures. However, there again that tendency is not uniform. On the first "d" is a definitely pointed loop. The "a" is very pointed and the second "a" in Sadler is very slightly pointed, if any, so I looked through the other loops contained [64] in the exemplars and I find they favor pointed and pointed ones are repeated. There is a tendency to pointing.

Q. Let us see now if we can take up specific instances. In the questioned document the word "Edgar" and "Sadler" are entirely separate, are they not? A. Yes.

(Testimony of Dr. Kirk.)

Q. Not connected in any way? A. Yes.

Q. In your E-3 they are connected?

A. Yes, that is right.

Q. What effect, if any, has that upon reaching a conclusion that the same wrote the documents?

A. It merely tells me that the man is quite variable in the way he connects his letters and that is borne out by all the other exemplars. In some cases he connects everything, some are broken after the "S," in some cases after the "a," some places the two names are separated.

Q. The same is true as to E-4, is it not, they were connected?

A. The "S" is connected and broken between the "S" and "a."

Q. That "S" in E-4 is an entirely different shape from any other "S," is it not?

A. Yes. It is very casual, practically nothing but just a line.

Q. In reference to your E-10, the word "Sadler," what happens, so far as you can tell, there in the lettering of the "d" in [65] "Sadler?"

A. I think there was perforation through the paper at that point; a check which had been perforated and the perforated marks show a number of places here and certain parts of letters were missing because they had been perforated. I think that is what happened there. That could be checked very readily on the original which is here.

Q. Do you see any comparison, as an expert, between "d" in "Edgar" on the questioned document and the "d" in E-3 on the photograph?

(Testimony of Dr. Kirk.)

A. Yes, the appearance of the up stroke of the "d" is very, very similar and the loop is an enlarged pointed one. It is very definitely the same muscular habit that produced it. It isn't looped in the same way, that is true, but it is very definitely the same muscular movement that made it.

Q. Would you say the similarity there is sufficient to enable you to say the same man who made the "d" in "Edgar" on the questioned document made the "d" in your E-3?

A. I wouldn't on that alone, but I wouldn't draw conclusion on less than a number of exemplars in any case.

Q. There is a difference in shaping of the loop; one is enlarged whereas the other one is—

A. One is a little grater.

Q. Isn't it true, Doctor, there is a variation and derogation in every one of the exemplars that you have upon your photograph [66] from the other? A. That is true.

Q. No two are exactly alike?

A. There are not even any two letters exactly identical, no, there practically never are.

Q. I am asking about what is here.

A. Yes.

Q. In your photo E-8, what is supposed to represent the letter "d" is "Sadler?"

A. The "l" seems to have been omitted. It is a very careless signature. The endorsement of the check.

Q. Does the fact that so many of the exemplars, as shown upon your photo, are connected, the name

(Testimony of Dr. Kirk.)

"Edgar" and "Sadler" are connected, and the questioned document is not connected, is that anything to disturb your conclusions about being the same handwriting?

A. No, it would not disturb my conclusions since both forms are shown. However, I think one can say whether they are connected or not depends whether it was rather a formal document or casual. In signing checks, for instance, they tend to be connected and in the two powers of attorney they are not connected and in signing the agreement they are not connected, so I feel the writer's habits are such he is a little more careful with important documents than less important ones, which is very common. Most people are more or less that way. [67]

Q. Is it your testimony that the signing of checks is not an important document, endorsing checks?

A. Endorsing checks is not considered as important as signing a legal document. Most people endorse their checks more casually—I believe they are more careful in signing checks than endorsing.

Q. You know the rule of bankers and the like is you have to endorse a check in exactly the same name as appears on the face? A. I know.

Mr. Thompson: Objected to as not proper.

The Court: I think he has answered.

Q. And you are also perfectly aware, are you not, in signing documents, such as this Exhibit 8 for identification, that there is no requirement of anybody that they be signed any particular way?

A. That is true.

(Testimony of Dr. Kirk.)

Q. You have given us all the reasons that you have been able to summon for the conclusion that the one who wrote these exemplars also wrote the "Edgar Sadler" on the questioned document?

A. There is nothing about the questioned which differentiates the signature from the exemplars; consequently, I feel the burden of proof shows it was obviously the same writing.

Q. My question is if you have any [68] additional reasons other than those you have already given? Are there any other reasons in your mind that lead you to the conclusion?

A. Well, one could go into more detailed analysis of each individual thing. That can be done. I have summarized them merely.

Q. You are satisfied that the facts as you have testified to are sufficient to justify your conclusion?

A. I feel very definitely that they are, yes sir.

Q. You say that it is obvious that one person wrote all of them. I suppose you mean from the general appearance and characteristics?

A. Yes, appearance, characteristics, letter form and individual idiosyncracies or unusual habits.

Q. But a person who wanted to forge a signature could do the same things, couldn't he?

A. No, he couldn't. The person who forges a signature attempts to draw it so it looks the same. When he writes freely his own muscular habits are included and he does not succeed in getting other than an extremely poor signature.

(Testimony of Dr. Kirk.)

Q. How can you tell that the name "Edgar Sadler" on the questioned document was not written freely or was?

A. By examination of the lines microscopically.

Q. What is evidenced by the microscope?

A. When written freely, the lines are continuous, unbroken, free of unusual wobbles or wavers or open spaces and [69] insertions, etc., whereas when you attempt to draw or trace, you have to keep constant watch on the model and you wobble at times or you get a little off the line and you correct it and it shows up under the microscope. It may be well enough done, not apparent to the eye, but under the microscope it shows up.

Q. You look for wavers and spaces under the microscope to determine whether it is freely written or not?

A. That is right.

Q. You found none in this case?

A. Found none.

Q. Can you describe just how they appear? Suppose we had one that had these spaces and wavers. Do you mean wavers, sort of up and down motion?

A. Up and down or slightly jerky or very commonly just sharp angles.

Q. As though the party writing had stopped to think?

A. That is the way it looks. In a curve, for example, the curve might progress by a series of short, straight lines instead of being smoothly curved. If you draw the curve freely, there will not be any angles in it.

Testimony of Dr. Kirk.)

Q. Does the microscope show that there are any formations of that kind you just described in the questioned signature?

A. I think there were no wavers there.

Q. What are these bumps occurring in the terminal and also in [70] the letters "d", "e", and "l" in Sadler?

A. That is what I mentioned.

Mr. Thompson: You are referring now to the photographic enlargement of Exhibit 8?

Mr. Cooke: Yes.

A. It is feathering, due to a little dirt on the pen and I examined it under the microscope. It wasn't something connected with the writing.

Q. Does that same answer apply to the wavering or the irregularities in "Edgar," particularly in the "gar" in Edgar? A. That is correct.

Q. You think that is accounted for by the ink being dirty?

A. I think that is accounted for by lint on the pen and it shows the same thing in the second signature here. You will notice feathering along some of these letters, not as distinct, but it is there.

Q. You are now talking about Alfred Sadler?

A. Yes, written below. This paper, of course, is cheap paper and sometimes fibers pick up on the pen point, or may have been lint, but I am very strongly inclined to believe something of that nature which caused the feathering.

Q. Did you examine the body of the document by microscope to ascertain any waverings or irregularities in the writing?

(Testimony of Dr. Kirk.)

A. Nothing approaching full examination. I undoubtedly looked at it microscopically but not with intention of [71] proving that point.

Q. Looking at it with the naked eye as it is there on the table before you, do you observe anything indicating that there are any waverings or irregularities as that was written by Mr. Alfred Sadler?

A. No, I see nothing there that would indicate any such thing.

Q. You haven't any way of determining, from such examination you made, whether the same pen was used in writing the name Edgar Sadler and the name Alfred Sadler in the body of the document have you?

A. Sometimes you can tell, but not with absolute certainty. More particularly two people using the same pen will make a difference in appearance because they press differently and hold at different angles, or possibly the same pen will look different. I would assume those were written by the same pen and ink. I don't think there is any significant difference there, but I can't say positively.

Q. That would include the entire body of the document and the name Edgar and Alfred Sadler?

A. That is correct.

Q. And there is nothing in the body of that document that would indicate to you that the ink used there was not the same as the ink used in Edgar Sadler writing?

A. Nothing on superficial examination. I could tell the difference, if there was a difference, by the use of chemicals [72] and comparison by the microscope.

(Testimony of Dr. Kirk.)

Q. You have not made that test?

A. But I did not make that test, no.

Q. Have you made any study of the subject of this particular document and its genuineness or examination since July 17th when Mr. Thompson and Clarence Sadler called?

A. Oh, within the last day or two I took out the pictures to look them over again, yes. I have not made any study of the originals, however, because I have not seen those since July except for about five minutes this morning.

Q. How soon after July 16, 1946, when these gentlemen visited you, did you begin the work of preparing the photostats and so on?

A. They were photographed, I believe the same day, the 17th of July, that is, the negatives were taken, and my examination was made primarily on the 18th.

Q. What is the name of the photographer who did the work for you under your supervision?

A. He is not a photographer. He is a colleague in the University named Dr. Craig.

Q. What are his initials?

A. R. Broderick.

Q. He is not a photographer?

A. Not a professional photographer. He actually is associate professor of entomology. [73]

Q. He is a competent photographer?

A. He is competent. Has much insect photography to do.

(Testimony of Dr. Kirk.)

Q. You can do it yourself, can you?

A. I can, yes. I have many times.

Q. And the entire work was completed then on the 18th, is that correct?

A. I wouldn't say everything was completed on the 18th but the bulk of it certainly was. I didn't return the document for a few more days and I undoubtedly examined them over a period of a couple of days.

Q. I suppose you submitted a report to Mr. Thompson and Mr. Sadler?

A. Yes.

Q. Is that report in writing?

A. It was in writing.

Q. Have you a copy of that report?

A. Not with me.

Q. Have you the original, Mr. Thompson?

Mr. Thompson: We have it, yes.

Mr. Cooke: I would like to see it.

Mr. Thompson: I think it is rather irrelevant. The witness' testimony is the best evidence.

Mr. Cooke: I would like to see the report.

The Court: It is optional. If he wants to see it, it is all right, but I don't think it [74] should be ordered.

Mr. Thompson: He can have it. Some of the markings on the report are mine.

Mr. Cooke: The red?

Mr. Thompson: Yes.

Mr. Cooke: Yes, I understand that. This is merely a summary of his testimony?

(Testimony of Dr. Kirk.)

Mr. Thompson: It agrees with his testimony, doesn't it, Mr. Cooke?

Mr. Cooke: I think so. That is all.

Cross-Examination

By Mr. Furrh:

Q. Doctor, how many points of similarity do you insist upon before you prove as to whether or not it is a genuine document?

A. I don't know as I can answer that question exactly because sometimes it is difficult to tell exactly what is a point. Eight to 12 points is usually considered proof and I do not believe I would care to decide on less than that.

Q. At least 8 to 12? A. I think so.

Q. Were there at least that many points of similarity?

A. There is no question there were that many points of similarity.

Q. Doctor, when you make this examination, do you line out the points that indicate the signatures were made by the same individual and also the points that indicate the signatures might [75] not have been made by the same individual?

A. I always mark both of them, certainly. I do not line them up but I make notations on the differences throughout.

Q. Then if you had, say 20 points of dissimilarity and 10 points of similarity, would the greater number control?

(Testimony of Dr. Kirk.)

A. Not necessarily, because if there is a dissimilarity that you can't account for, that is much more than a similarity. In other words, I would assume if two writings were very obviously similar, then it would be important to look for dissimilarities and if you can't find any duplication in your exemplars, I would be very leary of that, because in every examination you run into exemplars that are extremely close together and they turn out not by the same person.

Q. Can you say how many points of dissimilarity there were between the questioned document in this case and the known signatures?

A. There were more similarities than dissimilarities and I didn't find any real dissimilarities. The whole thing is similar.

Q. You say usually 8 to 12 points, didn't you, make up your opinion?

A. Yes, if you break it down.

Q. Can you say how many points of similarity you found in this case?

A. I didn't count them. I merely recorded the similarities [76] I found the *dissimilarities* and the dissimilarities in this case were—in no case did I consider them great. The similarities were uniform throughout. I mentioned, for example, the general similarity of the "e" which can be found but there are some exceptions to that; for instance, in E-9 it is extended, but it is still similar, and the bottom of the "e" is quite universally the same and you

(Testimony of Dr. Kirk.)

can go through each letter the same way and you find in every case either the dissimilarity is not there or you find both similarity , dissimilarity. I did not list the exact number.

Q. There were at least eight or more points of similarity?

A. Oh yes, I am sure there must have been more than that.

The Court: The Doctor may be excused.

Mr. Thompson: We offer Exhibit 8 in evidence.

Mr. Cooke: The defendant objects on the ground the proper foundation has not been laid to establish the signature of Edgar Sadler and placed there by Edgar Sadler, not established by any witness that the document and handwriting upon it was there at the time it was signed. It may have been a document with his signature was picked up and written there by somebody else. It takes more than the mere matter of signature to establish that this paper was signed and agreed to by Mr. Sadler. Somebody else wrote the body. Whether that was written before or after the name Edgar Sadler was put there is not shown. He denies that that paper was in that condition. [77] He never signed any such paper.

The Court: The objection is overruled and Exhibit 8 admitted in evidence.

Mr. Thompson: If the Court please, we offer in evidence Plaintiff's Exhibit 17 for identification, which is a certified copy of inventory and appraisement in the matter of the Estate of Reinhold Sadler,

deceased, in the District Court of the First Judicial District of the State of Nevada, in and for the County of Ormsby.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of the document, on the ground that it is irrelevant and immaterial and no proper foundation has been laid, in that it does not purport to be anything that would constitute legal evidence against Edgar Sadler. It is not connected with him in any way, but is simply the hearsay statement of a third party as to what pertained to the estate of Reinhold Sadler at the time this was made, on or about shortly after May 3, 1906. Your Honor is probably familiar with these documents in State courts. First is the usual certificate by the county clerk that certain persons were appointed appraisers, then follows the oath of the appraisers, that they would well and truly appraise, to the best of their ability, and then here is the affidavit of Louisa Sadler, the administratrix, etc. Now that is just merely a statement of Louisa Sadler that this inventory contains a true statement of [78] the property of Reinhold Sadler, so far as she knows, but if you put that in evidence against a third party, who did not have anything to do with the preparation of it, not consulted in regard to it, for the purpose of showing that that property did not belong to the third party but to the estate, would be beyond the rules of evidence. This appears to be a legal paper and there is no difference between that statement of Louisa Sadler that certain property belonged to the estate of Reinhold Sadler,

occurring in that document, than if she told it to John Roe on the street or made an affidavit for some other person. A hearsay statement is one made by some one out of the presence of another and this was a statement that was made, so far as the record shows, out of the presence of Edgar Sadler and it is sought now to put that fact into evidence as presumed that the property listed in this inventory belonged to the estate, which, of course, is one of the issues in this case. Just how that kind of a document could constitute legal evidence is impossible for me to say because if it should then all anybody would have to do in an estate would be to lay claim to everything in sight and then after 10 or 40 years put that in evidence as evidence of title. That is all that this document here could possibly accomplish. We object to it on the further ground that it does not purport, in any event, to be any claim of Louisa Sadler to any of the property involved in this case. The property involved, in this case, your Honor, of course your [79] knows is the so-called Diamond Valley Ranch in Eureka County. There is no reference whatever to the Diamond Valley Ranch as being property of Reinhold Sadler at the time he died. The only reference there is that there were 4,000 shares of capital stock of that company that belonged to Reinhold Sadler at the time he died, but the stock, of course, is not evidence of the ownership by Reinhold Sadler of any interest in the property. That we know from law. That is the only reference to the property in controversy here. So far as any personal property is concerned, the

livestock, there is no mention made of it, as I recall. I have studied it on previous occasions. So that the question of the stock, the shares of stock, being owned by Reinhold Sadler is not anything that we are concerned with here. They are not mentioned in the so-called trust agreement, not mentioned in the stipulation, not mentioned in the decree. If your Honor was called upon at this moment to decree a trust, you wouldn't decree any trust in any shares of stock because of the fact that it is not real property for one thing and not a point in this case for another, not described in the pleadings anywhere. We are not concerned with the shares of stock. It is true that in the complaint it is alleged that he was the owner of some shares of stock in the company at the time he died. It is also true that we deny it, but that does not make it material, your Honor, it does not make a material issue [80] simply because somebody asserts it. After all, it is a question as to whether matter which is alleged and denied is a material issue in the case. If we had said that the moon was made of green cheese and somebody denied it, of course it wouldn't be an issue in the case and that is comparable, I think, to this document, because of the fact the stock is not involved in the case, they do not plead it in their complaint so it seems to me they are out of line in urging ownership of stock when they do not ask and do not pretend to ask for any trust in reference to any stock. So we insist upon the objection, if your Honor please.

The Court: What is the purpose of the offer, Mr. Thompson?

Mr. Thompson: The purpose, your Honor, is to show, according to the inventory and appraisement of Reinhold Sadler estate, at the time of his death he owned 4,000 shares of stock in the Huntington & Diamond Valley Land & Live Stock Company, a matter which was denied by Edgar Sadler with much vehemence by special motion to amend his answer. It is material to show the condition of the affairs of Reinhold Sadler at the time of his death and at the time of the execution of the alleged trust agreement.

The Court: The administration proceedings have been completed?

Mr. Thompson: No, your Honor, it is alleged in the [81] amended complaint and admitted by the defendant that the administration of the estate was never closed.

The Court: There is no order of distribution?

Mr. Thompson: No, your Honor.

The Court: All that could be claimed to show, it seems to me, would be to show that the administration of the estate said the stock was the property of Reinhold Sadler.

Mr. Thompson: I think Mr. Cooke's objection affects the weight of the evidence rather than its admissibility, but your Honor must remember that we are dealing with matters that occurred 25 years ago.

The Court: The objection will be overruled and it will be admitted in evidence as Plaintiff's Exhibit No. 17.

PLAINTIFF'S EXHIBIT No. 17

In the District Court of the First Judicial District
of the State of Nevada, in and for the County of
Ormsby

In the Matter of the Estate of

REINHOLD SADLER
Deceased

INVENTORY AND APPRAISEMENT

I, H. B. Van Etten, County Clerk and ex-officio
Clerk of the District Court, do hereby certify that
D. H. Hall, J. A. Burlingame and P. B. Ellis, were
duly appointed Appraisers in the Estate of Reinhold
Sadler, deceased, by an order of said Court, duly en-
tered on the day of , 1906.

Witness my hand and the Seal of said Court this
3d day of May, 1906.

[Seal] H. B. VAN ETSEN,
 Clerk.

By ,
Deputy.

State of Nevada,
County of Ormsby—ss.

D. H. Hall, J. A. Burlingame and P. B. Ellis,
duly appointed Appraisers of the Estate of Rein-
hold Sadler, deceased, being duly sworn, each for

himself, says: That he will truly, honestly and impartially appraise the property of said Estate, which shall be exhibited to him, according to his best knowledge and ability.

D. H. HALL,
P. B. ELLIS,
J. S. BURLINGAME.

Subscribed and sworn to before me this 3 day of May, 1906.

H. B. VAN ETTEEN,
Clerk.

State of Nevada,
County of Ormsby—ss.

I, Administrator of the Estate of Reinhold Sadler, deceased, being duly sworn, say: That the annexed inventory contains a true statement of all the Estate of the said deceased which has come to my knowledge or possession, and particularly of all moneys belonging to the said Estate, and of all just claims of said deceased against me.

LOUISA SADLER.

Subscribed and sworn to before me this 18th day of May, 1906.

.....
Clerk.

INVENTORY

House & Lot Block No. 7—Phillips Div. Carson City, Nev., occupied as a home- stead by deceased and family at time of his death	\$1,200.00
Household furniture contained in home- stead, in use by family of deceased in the homestead in Carson, City, Nev.	300.00
Policy No. 771849, in Mutual Life Ins. Co. of New York.....	2,500.00
4000 Shares Cap. Stock of Huntington & Diamond Valley Live Stock and Land Co.	3,750.00
4000 Shares of the Capital stock of Eureka Gold Mines Development Co.....	100.00
Undivided 13/100th interest in the 12 min- ing claims situated in Robinson Mining District, White Pine County, Nevada, known as and called the "Great West- ern," "Joanna No. 2," "Cloud," "Roo Roy," "Hidden Treasure," "General Ar- thur," "General Logan," "Mitchell," "Emma," "Ontario," "Chief," "Point" 1,500.00	
Patented Mining claims in Newark Valley Mining District, White Pine County, Ne- vada, known as "Battery," "Ceylon," and "Sanches"	300.00
Lots 4 & 5, Block 37, in town of Eureka, Nev., & store buildings.....	1,400.00

Lot 4, Block 58, town of Eureka, Nev.....	\$ 25.00
Lot 4, Block 75, town of Eureka, Nev., & stables	220.00
Lot 13, in Block 37, town of Eureka, Nev..	25.00
Lots 15 & 16, Block 21, town of Eureka, Nev.	50.00
Lots 1, 2, 3 & 4, Block 94, town of Eureka, Nev.	50.00
Lots 1, 2, 3 & 4, Block 96, town of Eureka, Nev.	25.00
Lots 7, 8, 9 & 10, Block 19, town of Eureka, Nev.	50.00
W. 35 ft. of lot 12 & N. 25 ft. lot 13, Block 59, town of Eureka, Nev.....	20.00
Lot 14, Block 17, in town of Eureka, Nev..	10.00
Lots 4 & 5, Block 40, in town of Eureka, Nev. & brick dwelling thereon.....	530.00
Lot 8, Block 22, in town of Eureka, Nev....	50.00
N. 15 ft. of Lot 8, Block 36, town of Eureka, Nev.	25.00
One third undivided interest in Opera House and Lot 3, Block 23, town of Eureka, Nev.	750.00
Lot 15, Block 36, town of Eureka, Nev....	25.00
320 acres of land known as Nickals hay ranch, in Eureka Co., Nev.....	100.00

The administratrix called the attention of appraisers to the sum of \$872.16, on deposit in Bank of Nevada, Reno, Nev., for which she holds certificate of deposit issued in her, which sum, administratrix stated, had come into possession of and was held by deceased as Treasurer of the Grand Lodge, Knights of Pythias, and so advised the administratrix before his death, which sum, we did not include in this appraisement, believing from the statement of administratrix, that said sum was held by deceased, in trust for said Grand Lodge.

\$13,005.00

Judgment in favor of Reinhold Sadler in case Wm. McMillan vs. Reinhold Sadler in Supreme Court State of Nevada, for \$641.—which paid judgment is of unknown value.

We, the undersigned, duly appointed Appraisers of the Estate of Reinhold Sadler, deceased, hereby certify that the property mentioned in the foregoing inventory has been exhibited to us, and that we appraise the same at the sum of Thirteen Thousand and Five Dollars.

Dated May 3, 1906.

[Seal] D. H. HALL,

Appraiser.

P. B. ELLIS,

Appraiser.

J. S. BURLINGAME,

Appraiser.

State of Nevada,
County of Ormsby—ss.

I, Marietta Legate, County Clerk of Ormsby County, State of Nevada, and ex-officio Clerk of the District Court, in and for the County of Ormsby, do hereby certify that the foregoing is a full, true and correct copy of the original Inventory and Appraisement, in the matter entitled: In the Matter of the Estate of Reinhold Sadler, Deceased, which now remains on file and of record in my office in said Carson City, in said County.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Carson City, in said County and State, this 25th day of September, A.D. 1946.

[Seal] /s/ MARIETTA LEGATE,
Clerk.

[Endorsed]: Filed Oct. 14, 1946.

Mr. Thompson: We offer in evidence Plaintiff's Exhibit No. 18 for identification, which is a certified proof of claim filed by Minnie C. Sadler against the Estate of Reinhold Sadler, deceased, in the First Judicial District Court of the State of Nevada, in and for the County of Ormsby.

The Court: This might be a good point at which to take our recess until tomorrow morning. Court will be in recess until tomorrow morning at 10:00 o'clock.

(Recess taken at 5:00 p.m.) [82]

Tuesday, October 15, 1946
10:00 A.M.

Appearances as at previous session.

The Court: Are you ready to proceed, now, gentlemen?

Mr. Thompson: Plaintiff is ready, your Honor. When we concluded yesterday, your Honor, we had offered in evidence Plaintiff's Exhibit 18 for identification.

Mr. Cooke: The defendant makes the same objection to the admission in evidence of the Plaintiff's Exhibit 18 for identification, upon the ground that it is irrelevant, immaterial, not in issue in this case, particularly as to any ownership by the plaintiff, Clarence Sadler, of any interest, either legal or equitable, in the property described in the complaint. That the document merely purports to be a promissory note for \$10,425, signed by Reinhold Sadler and payable to Mrs. Minnie C. Sadler, and annexed to that is her affidavit in the usual form in cases filed for claim against an estate, and the note is security of 1999 shares of stock in the Huntington & Diamond Valley Land and Stock Company, a California corporation, by assignment of the stock to the affiant by the said decedent, Reinhold Sadler, etc. We wish to add to our objection that under the rule of entirety the document is not admissible in evidence because it shows on its face that there are other documents made a part of it which are not included in the offer, to-wit, the as-

signment of the stock to the affiant by the decedent, copy of which is hereto annexed. It is not [83] hereto annexed. All we have here is merely the promissory note and affidavit as to the claimant.

The Court: Mr. Cooke, you filed an amended answer?

Mr. Cooke: Yes, sir.

The Court: Denying Paragraph 2 of the amended complaint?

Mr. Cooke: That is right.

The Court: Did you file an answer?

Mr. Cooke: No, I think it was agreed that I might file a sticker, put that amendment on a sticker.

Mr. Thompson: I think it was just ordered, your Honor, that the answer be amended in accordance with the statement in the motion.

The Court: There should be, I think, formal orders filed or pleadings filed so the file is complete.

Mr. Cooke: There is an order made permitting the amendment and I have prepared—there was some talk as to whether it could be corrected by interlineation and as I recall I was to prepare a sticker paragraph which could be attached.

The Court: I think it would be well to do that so anyone picking up this file could see what the issues are.

Mr. Cooke: I have that here, your Honor. Here is [84] the way I understood it. That is a copy of the amendment as set up in the motion.

Mr. Thompson: This proposed sticker is in accordance with your Honor's order.

The Court: If that sticker was annexed to Edgar A. Sadler's answer, with a note made by the Clerk that it is in accordance with order made on the particular date that we heard that motion, that would complete the file, wouldn't it?

Mr. Cooke: I think so.

The Court: So that can be done later on. I understand the purpose of this is merely to show a right of authority or ownership of that stock by the deceased, Reinhold Sadler.

Mr. Thompson: There are two purposes, your Honor. First, to show that the claim was filed by Minnie C. Sadler, and secondly it is evidentiary of the fact that Reinhold Sadler owned 1945 shares of stock in the company, subject to the lien of the claim.

The Court: Just how is Minnie C. Sadler connected here?

Mr. Thompson: She is the wife of Reinhold Sadler's brother, Herman Sadler. I will bring that out in the testimony. [85]

Mr. Cooke: We would like to add to the objection that that proof there, instead of showing specific interest in the plaintiff, Clarence Sadler, shows whatever interest there was in that stock is vested in Minnie C. Sadler.

The Court: Objection overruled and exhibit admitted in evidence as Plaintiff's Exhibit 18.

PLAINTIFF'S EXHIBIT No. 18

\$10425.00 Eureka, Nevada, Dec. 29, 1888.

On the second day of January, 1889, without grace, I promise to pay to the order of Mrs. Minnie C. Sadler Ten Thousand Four Hundred and Twenty-five Dollars, with interest at the rate of five (5%) per cent. per annum from date until paid. Principal and interest payable only in Gold Coin of the Government of the United States, for value received. This note is payable at option of holder in Nevada or California.

REINHOLD SADLER.
District Court

State of Nevada,
County of Ormsby.

In the Matter of the Estate of
Reinhold Sadler,
Deceased

*.....

State of California,
County of Alameda

Minnie C. Sadler of said last named county and state, being duly sworn makes oath and says that at the time of his death the above named Reinhold Sadler, was justly indebted to this affiant in the sum of Ten thousand and four hundred twenty-five dollars with interest thereon at the rate of five per cent per annum from the 29th day of December

1888 amounting to \$9100.11 interest and aggregating \$19525.11 interest and principal. That said indebtedness arose and was incurred on account of moneys loaned by the affiant to the decedent and represented by his promissory note made by him and delivered to the affiant and now in her possession, a copy of which note and endorsements of all payments made thereon is hereto annexed, herewith filed and made a part hereof. That said note is secured by 1999 shares of stock of the Huntington and Diamond Valley Land and Stock Co., a California corporation, doing business in Nevada, by assignment of said stock to the affiant by said decedent as collateral security, a copy of which assignment and shares of stock are hereto annexed and herewith filed as a part hereof, the originals thereof being in affiant's possession by delivery from said decedent in his life time. That there is now justly due and owing to affiant on account thereof from the estate of Reinhold Sadler, deceased \$10425, principal and \$9100.11 interest thereon as aforesaid, making \$19525.11 in all. That no payments have been made thereon which are not credited and there are no offsets to the same to the knowledge of this claimant.

[Seal] MINNIE C. SADLER.

Subscribed and sworn to before me this 16th day of June, 1906.

[Seal] CARY HOWARD,
Notary Public, Alameda Co.,
Cal.

State of Nevada,
County of Ormsby—ss.

I, Marietta Legate, County Clerk of Ormsby County, State of Nevada, and ex-officio Clerk of the District Court, in and for the County of Ormsby, do hereby certify that the foregoing is a full, true and correct copy of the original Proof of Claim, in the matter entitled:

In the Matter of the Estate of
Reinhold Sadler, Deceased

which now remains on file and of record in my office in said Carson City, in said County.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Carson City, in said County and State, this 25th day of September, A.D. 1946.

[Seal] /s/ MARIETTA LEGATE,
Clerk.

State of Nevada
County of Ormsby

District Court

In the Matter of the Estate of
Reinhold Sadler, Deceased

Proof of Claim
Minnie C. Sadler, Claimant

Amount \$19525.11
For Promissory Note

Address of Claimant, No. 249 Hanover Street,
Station L, San Francisco, California

Filed June. 19, 1906.

H. B. VAN ETTEN,
Clerk.

The within claim presented to the administratrix
of said estate deceased and allowed and approved
for \$19525.11 this 9th day of July, 1906.

LOUISA SADLER,
Administratrix.

Allowed and approved for \$19525.11 this 21st day
of July, 1906.

M. A. MURPHY,
District Judge.

[Endorsed]: Filed Oct. 14, 1946.

EDGAR A. SADLER

resumed the witness stand as an adverse witness
on further

Cross-Examination

By Mr. Thompson:

Q. Mr. Sadler, after your father's death and
prior to March 2, 1918, you knew, did you not, of
the fact that Minnie C. Sadler had filed a claim
against your father's estate? A. Yes.

Q. And you knew that that claim was in the
total sum of \$19,525.11?

A. I didn't know how much it was for.

(Testimony of Edgar A. Sadler.)

Q. You knew it was for a substantial amount of money? A. Oh, yes.

Q. Now isn't it true, Mr. Sadler, that the claim of Minnie C. Sadler against the estate of your father, Reinhold Sadler, was involved in the settlement of the quiet title suit in Elko County?

A. I don't know.

Q. Isn't it true that Minnie C. Sadler agreed to withdraw that claim against your father's estate as part of the settlement [86] arranged by that quiet title suit?

A. No, I didn't know anything about it.

Q. Minnie C. Sadler was the wife of your father's brother? A. Yes.

Q. Your father's brother's name was Herman Sadler? A. Yes.

Q. And he had a son, Herman J. Sadler?

A. Yes.

Q. And it was his son, Herman J. Sadler, who was active in the management of the Huntington & Diamond Valley Land & Stock Company at the time of the quiet title suit? A. Yes.

Q. Now in order to refresh your recollection about the terms of that settlement, Mr. Sadler, I want to show you a letter. I show you Plaintiff's Exhibit 19 for identification. Will you examine it and state whether or not that refreshes your recollection about the terms of the settlement of the

(Testimony of Edgar A. Sadler.)

quiet title suit. Does that refresh your recollection at all regarding the terms of that suit?

A. Well, I don't know anything about it.

Q. Are you familiar with the signature of Mr. H. U. Castle? A. Not too well.

Q. Are you sufficiently familiar with it to form an opinion as to whether the signature on this letter, Exhibit 19 for identification, is his signature?

A. Yes, that is his signature.

Mr. Thompson: I offer the letter, Exhibit 19, in evidence, your Honor.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of the offer 19 for identification, on the ground that it is immaterial and irrelevant and no proper foundation has been laid in that it is not shown that the witness had anything to do with it or ever saw it. It is on its face addressed to Alfred Sadler and not to the witness. That if it is offered for the purpose of showing any disposition of the stock of Minnie C. Sadler, there is no foundation for it, on the ground that her name is not mentioned and there is no way of identifying the reference made in this letter with Minnie C. Sadler, if that is the purpose of it. That it is hearsay; that it is not a part of the legal business of the attorney. It is made after the suit went to judgment and not anything that the attor-

(Testimony of Edgar A. Sadler.)

neys presumably were authorized to make representation as to their client.

Mr. Thompson: We would like to point out, your Honor, that the testimony shows that Mr. Castle was the duly authorized—

The Court: Just a moment. Let me read it, Mr. Thompson. (Reads.) All right, Mr. Thompson.

Mr. Thompson: The evidence shows, your Honor, that [88] Mr. Castle was the duly authorized attorney for Edgar Sadler and Alfred Sadler, that the firm of Curler & Castle represented them in Elko and the firm of Cheney, Downer, Price & Hawkins represented them in Reno. One of the letters in evidence shows that the arrangement was made because of the difficult travel conditions and they wanted to have an attorney on the job in Elko. The powers of attorney are in evidence, showing that Alfred Sadler represented himself and other heirs of Reinhold Sadler, deceased, and we offer the letter as a business communication between the duly authorized agent of Edgar Sadler and other parties involved in this transaction.

The Court: It will be admitted in evidence as Plaintiff's Exhibit 19.

(Testimony of Edgar A. Sadler.)

PLAINTIFF'S EXHIBIT No. 19

B. F. Curler

H. U. Castle

Curler & Castle
Attorneys at Law
Elko, Nevada

March 18, 1918.

Mr. Alfred Sadler,
Reno, Nevada,

Dear Alfred:—

Just received the deed from the Corporation conveying the Diamond Valley Ranch to you and Edgar which is in addition to the decree and the deed made by Hermann as attorney in fact. Also got the withdrawal from your aunt withdrawing all claims against your father's estate. These papers I have sent to Cheney, so please call at his office and get the withdrawal and do what you wish with it.

Have delivered the deeds to Van Fleet, I mean the Harvey and Wilhelmine Sadler patents have been turned over.

I just want to add that on the day we got back to Elko, Edgar was offered \$40,000 for the ranch alone but refused to take it as he is holding for a better price in case you and he wish to sell. Better keep this to yourself though as Bertha may raise or try to raise more hell.

Sincerely yours,

CURLER & CASTLE,
By /s/ H. U. CASTLE.

[Endorsed]: Filed Oct. 15th, 1946.

(Testimony of Edgar A. Sadler.)

Q. Who is Harvey Carpenter, Mr. Sadler?

A. Don't you know?

Q. No, I don't.

A. Well, I guess I will have to tell you. He is a man that lived in Eureka County, I guess for a long time.

Q. He was a friend of your father, Reinhold Sadler? A. He might have been.

Q. Do you know whether he was or not?

A. I do not know.

Q. Did you ever see them together?

A. No.

Q. Who was Wilhelmina Sadler? [89]

A. That is my sister.

Q. She died prior to your father's death, did she not? A. She did.

Q. Don't you know that a good many of the contracts for the purchase of lands for your father from the State of Nevada were taken in the names of other persons, including Wilhelmina Sadler and Harvey Carpenter?

A. Sure they were. They couldn't have got the land if they hadn't taken it up that way.

Q. And those are lands that were claimed by your father, Reinhold Sadler, and by the Huntington & Diamond Valley Land & Stock Company, were they not? A. I suppose so.

Q. Mr. Sadler, you recall the time of your brother, Alfred's, death?

A. Yes, I was here.

(Testimony of Edgar A. Sadler.)

Q. He died March 5, 1944, did he not?

A. Yes.

Q. And you were present in Reno, Nevada, with your wife, Ethel Sadler, on March 6, 1944, the following day? A. The following day?

Q. Yes. A. Yes, we were here.

Q. And weren't you present in the home of Kathryn Sadler, Alfred Sadler's wife, on that date?

A. We were there in the evening.

Q. And Clarence Sadler, the plaintiff, was present there also? A. Yes.

Q. At that time do you not recall that Clarence Sadler said to you in substance that while you were there together it would be a good time to talk about the ranch and settle his interest in it?

A. He didn't say his interest; he said settle about the ranch.

Q. And at that time did you not say to Clarence Sadler that he had no interest in the Diamond Valley Ranch whatsoever? A. Yes, sir.

Q. Isn't that the very first time that you ever said to Clarence Sadler, in substance or effect, that he had no interest whatsoever in the Diamond Valley Ranch or the cattle thereon or any of the equipment? A. No, sir.

Q. What is the first time that you said that to him? A. Oh, it was in '25 once.

Q. 1925? A. Yes, and before that.

Q. Before that, too? A. Yes.

Q. When before that, when before 1925?

A. I don't know the date.

(Testimony of Edgar A. Sadler.)

Q. Well, do you recall the occasion when you were together? [91]

A. Well, they were out to the ranch.

Q. Before 1925? A. Yes.

Q. They were out to the ranch? Now who are "they?" A. Clarence and his wife.

Q. They visited the ranch, that is, the Diamond Valley Ranch in Eureka County? A. Yes.

Q. Before 1925? A. Yes.

Q. Do you remember the date?

A. No, I couldn't remember the date.

Q. Well, how long before 1925?

A. Well—

Q. Did they visit the ranch every year?

A. No.

Q. Well, was it two or three years before 1925?

A. I think it was.

Q. You think it would be about 1922?

A. Somewhere along in there.

Q. You think that is about right? A. Yes.

Q. Now you say as you recall it some time about 1922 Clarence Sadler and his wife, that is Doris Reba Sadler, were at your ranch, the Diamond Valley Ranch? [92] A. Yes.

Q. And you had a conversation then?

A. Yes.

Q. And who else was there beside yourself?

A. My wife.

Q. Your wife, Ethel Sadler? A. Yes.

Q. Anybody else?

A. I don't think so.

(Testimony of Edgar A. Sadler.)

Q. What did you say to Clarence Sadler at that time?

A. Well, he was talking about the ranch and I told him he had nothing to do with it.

Q. By "nothing to do with it" were you referring to nothing to do with the management of the ranch? A. With any of it.

Q. Did you tell him he didn't have any interest in the ranch at all?

A. I said he didn't have anything to do with the ranch.

Q. Now in 1925 you say you had another conversation with him? A. Yes.

Q. And where did that conversation take place?

A. At the ranch.

Q. And who was present then?

A. Well, my wife was there.

Q. Your wife, Ethel Sadler? [93]

A. Yes.

Q. Was Clarence's wife there? A. No.

Q. Just Clarence and your wife, Ethel Sadler, and yourself? A. Yes.

Q. And do you remember about what month in 1925 that was? A. I think it was September.

Q. You think it was September, 1925?

A. Well, the deer season was open then. He was up there hunting deer with another man from his office.

Q. Do you recall the other man's name?

A. No, I didn't know the man at all.

Q. What was the conversation that you had at that time? A. Same thing.

(Testimony of Edgar A. Sadler.)

Q. You told him he didn't have anything to do with the ranch? A. Yes.

Q. Well, what had he said to you that caused you to say that?

A. Well, he said he had an interest in the ranch.

Q. Clarence told you that he had an interest in the ranch? A. Yes.

Q. And you told him that he didn't have anything to do with the ranch? A. Yes.

Q. Is that what happened? A. Yes. [94]

Q. Now when was the next time you talked to him about that?

A. That's all.

Q. Just those two times?

A. No, that time my brother died.

Q. Yes, that is in 1944? A. Yes.

Q. Any other time? A. No.

Q. Those are the only two times that you talked to him about it? A. Yes.

Q. Did you talk to him about it in 1938?

A. I don't know. I don't think so.

Q. Well, you allege in your answer, Mr. Sadler, that you did talk to him about it in 1938. Do you recall that now? I show you paragraph I of the first affirmative defense of the answer you filed in this case.

A. That's the time he was up there hunting deer, I think, '38.

Q. You think that was the time he was up there hunting deer? A. I think so.

(Testimony of Edgar A. Sadler.)

Q. Who was with him then?

A. That fellow from his office. I don't know what his name was.

Q. And so, as I understand it, the instance you related as having happened in about 1925 happened in 1938, is that right? [95]

A. Yes.

Q. Or was he there hunting deer twice?

A. No.

Q. Then in 1938 he asked you about his interest in the ranch and you told him he didn't have anything to do with it?

A. Yes.

Q. Continuously since 1922 or 1923 have you denied that Clarence Sadler had any interest in the ranch?

A. Yes.

Q. Have you ever so stated to Alfred Sadler?

A. No.

Q. Just to Clarence, is that right?

A. Yes.

Q. Did you ever state to Alfred Sadler that he, Alfred Sadler, didn't have any interest in the ranch?

A. No.

Mr. Cooke: I move the answer be stricken until I can make my objection.

The Court: It may go out.

Mr. Cooke: We object on the ground that calls for transaction of a deceased person. This shows here that Alfred Sadler died in March, 1944, and under the so-called dead man statute in Nevada I think this would be objectionable and incompetent because it is asking him to testify to what he may have said to Alfred Sadler in regard to certain

(Testimony of Edgar A. Sadler.)

subject matters [96] stated in the question. He should not be permitted to go into such testimony as that. I make the further objection as to Alfred Sadler—

Mr. Thompson: I withdraw the question, your Honor.

Q. Mr. Sadler, how many cattle were on the Diamond Valley Ranch in Eureka County, Nevada, in Feburary and March, 1918?

A. Whose cattle?

Q. How many cattle on the ranch?

Mr. Cooke: Objected to. The only cattle we have to do with here are cattle that belonged to the estate.

The Court: Objection is overruled. You may answer the question.

A. Whose cattle do you mean?

Q. All the cattle on the ranch. How many?

A. There might have been a thousand or more.

Q. All right. How many head of those cattle belonged to you personally?

A. About 200 head.

Q. You have alleged in your answer that not more than 50 head bore the brand of Reinhold Sadler, is that correct?

A. There was no brand of Reinhold Sadler.

Q. What is the "J C" brand?

A. I branded them myself and I claimed them and the Huntington & Diamond Valley Land & Stock Company claimed them.

Q. In whose names was that brand [97] registered?

(Testimony of Edgar A. Sadler.)

A. Well, it was registered in my mother's name.

Q. In the name of your mother, Louisa Sadler, is that right? A. Yes.

Q. And as you recall it there were about 50 head of cattle bearing that brand?

A. No, there wasn't that many.

Q. How many were there?

A. Probably 20 or 25.

Q. What is your personal brand?

A. Two half circles.

The Court: What is the first brand you referred to?

Mr. Thompson: I think it is J C.

A. No, it is J bar C.

Q. Will you explain J bar C brand, how is it made?

A. You want me to draw it? Well, it is J and then a bar and C connected.

Q. The bar connects the J and the C, is that correct? A. Yes.

Mr. Thompson: That is all, your Honor.

Examination

By Mr. Cooke:

Q. You just stated on your cross-examination that you used the J bar C brand, you put that on some of your own cattle. Just how was that handled? Why would you brand that when you had your own brand? [98]

A. When I got my own brand, I didn't use that brand.

(Testimony of Edgar A. Sadler.)

Q. When did you get your own brand, that is the interlocking quarter or half circle?

A. It was before 1906.

Q. Well, you told us on your cross-examination that there were some 20 head of the J bar C cattle on the ranch. How were they branded and when and by whom, if you know?

A. They were branded by me, my men that worked there.

Q. Well you just told us after you got your brand, prior to 1906, you did not use the J bar C?

A. Yes.

Q. How old were these cattle in 1918? Were they branded before your father died? A. Yes.

Q. They were old cattle? A. Yes.

Q. 12 years say or older?

A. Yes, older than that, some of them 20 years.

Q. Is it your best recollection that after the time of the death of your father in 1906 and this year 1918 that you didn't brand any cattle with the J bar C brand? A. Yes.

Q. You used your own brand?

A. Used my own brand.

Q. These 20 odd head that you say were on the ranch with the [99] J bar C brand in March of 1918, did they belong to you?

A. Well, I claimed them and the Huntington & Diamond Valley Land & Stock Company claimed them. Just a minute—when this settlement was made, I asked Herman Sadler, "What are you going to do with those cows? and he said, "You take them."

(Testimony of Edgar A. Sadler.)

Q. Referring to these old cows?

A. He said, "You take them. You have done enough staying on that dang ranch, or whatever you want to call it, and paying everything. You are entitled to them."

Q. That is Herman Sadler, the agent and attorney in fact for the Huntington & Diamond Valley Company? A. Yes.

Q. Where did that arrangement or talk take place? A. Down here.

Q. Here in Reno? A. Yes.

Q. Who else was present, if any one?

A. There was nobody there. There were a lot standing around there but I don't know who they were.

Q. The dispute as to whom those cattle really belonged to continued on down to the time you and Herman Sadler had this talk, is that right?

A. Yes.

Q. And after that was there any further dispute? A. No, no dispute. [100]

Q. You took the cattle?

A. That is right, I took the cattle.

Q. Now you gave a chattel mortgage on your quarter circle brand cattle and also these J bar C cattle? A. Yes.

Mr. Thompson: That is objected to. The written instrument is the best evidence. We move the answer be stricken.

The Court: You can answer that question yes

(Testimony of Edgar A. Sadler.)

or no. If you are going into the subject of mortgage or anything of that kind, you should produce the instrument.

Mr. Cooke: All right.

Q. I show you what purports to be a chattel mortgage dated March 2, 1918, between Edgar Sadler and Alfred Sadler and the Washoe County Bank and ask you to look at that and state if you remember executing that document.

A. Yes, that's all right.

Q. You remember the document, do you?

A. Yes, I remember it.

Q. That is your signature there?

A. Sure.

Mr. Cooke: We ask that it be marked for identification.

The Court: It will be so marked, Defendant's Exhibit A. [101]

Q. Defendant's Exhibit A, you note the description of the cattle—

Mr. Thompson: We object to the witness testifying about something that isn't in evidence, from an instrument that isn't in evidence.

Mr. Cooke: It is preliminary for making the offer.

The Court: I think he can state whether or not he notices that matter. Objection will be overruled.

(Question read.)

Q. —given in the document?

The Court: You can answer that yes or no.

A. Yes.

(Testimony of Edgar A. Sadler.)

Mr. Cooke: We offer the document in evidence.

Mr. Thompson: No objection.

The Court: It may be admitted in evidence as Defendant's Exhibit A.

Q. In Defendant's Exhibit A the cattle are described as 50 head cattle branded C J on right hip. Is that the same bunch of cattle that you referred to a moment ago as 20 head?

A. Yes sir.

Q. Were there as many as 50 head, as a matter of fact?

A. I don't know, never counted them.

Q. Well you now testify that there were some 20 head? A. Yes. [102]

Q. When did you ascertain there were 20 head instead of 50 as mentioned in the chattel mortgage?

A. I counted them in the fall.

Q. The fall of that same year? A. Yes.

Q. Who was with you when you counted them?

A. Well, I don't know, three or four men working in there. Mr. Eccles, he was there representing—

Q. In the talk you had with Herman Sadler you have already told us about, where he told you to take the J bar C cattle that you testified, was any particular number mentioned? A. No.

Q. Did that arrangement between you and Herman J. Sadler, as you understood it, include all of the J bar C cattle that were there? A. Yes.

Q. The 200 head of cattle branded interlocking quarter circle or half circle on the right hip. I think you told us that was your brand and those were your cattle? A. Yes.

(Testimony of Edgar A. Sadler.)

Q. When did you acquire those?

A. Before 1906.

Q. How long before 1906 did you start in buying cattle or acquiring cattle for yourself? About as near as you can tell us? [103]

A. I wouldn't know what the date was.

Q. I understand, but give us your best judgment as to about the time. Your father died in 1906. About how many years before he died?

A. Three or four years.

Q. About 1900 then?

A. Somewhere along there.

Q. And this brand, I think you told us when you first acquired that—

A. If you have the mortgage on them cattle you can find out right away when I bought those cattle.

Q. Well, you mean this same document I showed you a moment ago?

A. No, no, another one.

Q. Well, you are giving us your best recollection now? A. Yes.

Q. This iron, this quarter circle iron, was that an original iron with you or did you buy it from somebody else?

A. No, I didn't buy it.

Q. You just had it made?

A. No, I didn't have it made.

Q. How did you get it?

A. It jused to be used on the Diamond Ranch, oh long before I come there, and it was thrown away and I just picked it up and used it.

(Testimony of Edgar A. Sadler.)

Q. Do you remember when, if at all, you had it registered? [104]

Mr. Thompson: Objected to, I think the record is the best evidence of that, your Honor. He can obtain that record from the registry office.

The Court: The objection will be overruled. You may answer the question.

Q. About when, if you recall, did you have it registered first?

A. Oh, 1920, somewhere along there.

Q. 1920? A. Yes.

Q. Is that the first registration, as far as you know? A. Yes.

Q. You understand the rule and law in regard to re-registereing every five years?

A. Oh, yes, every five years.

Q. Then you just picked this brand up and used it from some time about 1900 down to 1920 before it was actually registered, is that true?

A. Yes.

Q. And you registered with the county recorder at— A. Eureka.

Q. The J bar C cattle that you have referred to and the interlocking quarter circle, 200 head that you mentioned, were they all running together on the same ranch? A. Yes sir. [105]

Q. All co-mingled together, were they?

A. Yes sir.

Q. You have told us on cross-examination something about several trips that Clarence Sadler made to the ranch, once I think, in 1925 or so and another

(Testimony of Edgar A. Sadler.)

one in 1938. Were those the only occasions that he was on the ranch, say from 1918 to the present time?

A. I think so.

Q. And when he was out there in 1938 he was there on a hunting trip, as you recall it?

A. Yes sir.

Q. And there was some man with him?

A. Yes sir.

Q. Can you give the name of that man?

A. No, I don't know the name.

Q. Can you identify him in any way at all?

A. No, he was a man that worked with Clarence in his office.

Q. In San Francisco?

A. Yes, San Francisco.

Q. From whom or in what way did you learn that? A. That is what he said.

Q. Who said it?

A. The man that was there.

Q. And was he there on a hunting trip too?

A. Yes. [106]

Q. They came and left together? A. Yes.

Q. Did they do any hunting there that you know of?

A. Yes, they went out and hunted but never caught anything.

Q. That is the usual experience.

A. Had another man go out and shoot a deer for them.

Q. How long did they stay?

A. Three or four days.

(Testimony of Edgar A. Sadler.)

Q. Where did they stay while they were there?

A. Right at the house.

Q. At your house? A. Yes.

Q. Did you have a discussion with Clarence more than once during that two or three days he was there, in regard to the ranch or its operation?

A. No, I think only once.

Q. When was that with reference to the time that he landed there? Was it some time after, or just before he left?

A. Oh, a day or two after.

Q. Who was present at that conversation?

A. My wife was there.

Q. Anybody else?

A. I don't know. I don't think so.

Q. Either of your sons there or their wives?

A. I don't think so. Floyd's wife might have been there, I [107] don't know.

Q. Well, that is your best recollection any way?

A. Yes. I don't think there was anybody there but myself and my wife.

Q. Yourself and your wife and Clarence?

A. Yes.

Q. How did the matter of the ranch first come up? Just tell us as nearly as you can recall what was said and who it was that said it. Give us as near as you can recall. I realize you can't give it exactly or anything of that sort.

A. Well, we were just talking there and then he asked me what we were going to do with the ranch and I told him—

(Testimony of Edgar A. Sadler.)

Q. What were you talking about?

A. Oh, different things I guess.

Q. Well, was it about the ranch or politics?

A. Oh, about mining and everything.

Q. And then as you remember it he abruptly asked you what you were going to do about the ranch? A. Yes.

Q. And you said what?

A. I told him he didn't have nothing to do with the ranch.

Q. What did he say to that?

A. He said he was going over to my nephew's and find out about it.

Q. Your nephew's name is what? [108]

A. Edgar Lane Plummer.

Q. Do you know whether he went to see the nephew or not? A. He never went.

Q. Was that all you can recall now that was said in regard to the ranch and its operation?

A. Yes, that's all.

Q. Now on the other occasion, which was in 1925, as I believe you stated, or as near as you can recall, is that right? A. Yes.

Q. What was his business out there then, so far as you know?

A. Just a visit, I guess, that's all.

Q. He didn't go hunting on that occasion?

A. No.

Q. Nobody was with him? A. His wife.

Q. How long did they stay there?

A. Two or three days.

(Testimony of Edgar A. Sadler.)

Q. At the ranch? A. Yes.

Q. And you all stayed there together and ate at the same table, etc.? A. Yes, sure.

Q. When did the discussion about the ranch or its ownership first come up on that occasion? How long after he arrived there? [109]

A. Oh, it might have been a day or two, somewhere along in there.

Q. Where did it take place?

A. At the ranch.

Q. I know, but the ranch is three thousand acres. A. In the house.

Q. Who were present in the house at the time the talk was had?

A. I think my wife was there.

Q. And anybody else?

A. I don't think so.

Q. Was Clarence Sadler's wife there?

A. Oh yes, she was there.

Q. And how did the discussion or talk in regard to the ranch or its ownership or Clarence having any interest in it or the like, how did that start?

A. Well, I don't know how it started.

Q. Tell us, as near as you can recall, what was said, the substance of it.

A. Well, just said what we going to do with the ranch.

Q. About the same as in 1938? A. Yes.

Q. Do you remember what was said immediately preceding that, what led up to the question, "What are we going to do with the ranch?" Is that the way you recall it? A. Yes. [110]

(Testimony of Edgar A. Sadler.)

Q. And your answer was what?

A. He didn't have nothing to do with it.

Q. The talk on both occasions was practically the same? A. Yes, about the same.

Q. When you told him he didn't have anything to do with it, what did he say?

A. He didn't say nothing.

Q. Was that subject renewed in any way at all after that during that visit? A. No.

Q. What was he doing out there for these three days? He wasn't hunting, what was he doing?

A. Visiting around.

Q. Visiting around with anybody beside your family?

A. Well, I think he went over to Plummer's.

Q. Where do the Plummers live?

A. Over in Pine Valley.

Q. The Plummers were relatives?

A. The boy is my nephew.

Q. And the son of Wilhelmenia, your sister, is that right? A. Yes.

Q. How far did the Plummers live from your place?

A. About 23 or 24 miles, something like that.

Q. Did Clarence and his wife on that occasion spend most of the two or three days' time visiting with you or the Plummers? [111]

Mr. Thompson: We object, your Honor. He is asked to testify to something he doesn't know. He said, "I think they went over to the Plummer's"

(Testimony of Edgar A. Sadler.)

and obviously he can't know if they were at the Plummers, if they were at his house.

Q. You said something about his visiting at the Plummer's. Do you know he was visiting there?

A. Sure, I know.

Q. How much time did he spend at Plummer's compared with the time he spent with you?

A. Well, he didn't stay there long. Went over in a day and came back the same day.

Q. That is at the Plummer's? A. Yes.

Q. You have been at the ranch, this Diamond Valley Ranch that we have been talking about, continuously since 1918 and for that matter a long time before that, have you not? A. Yes, sir.

Q. You have already told us about that. I think you told us on your so-called cross-examination, but let me ask you this—these two visits of Clarence Sadler out there that you just told us about in 1925 and one in 1938, were they the only occasions that he was on the ranch, so far as you know, we will say subsequent to March, 1918? A. Yes, sir.

Mr. Thompson: He testified to that other occasion, [112] Mr. Cooke.

Mr. Cooke: I don't think so. He said two visits, is that right? A. That is right.

Q. 1925 and 1938?

Mr. Thompson: He also testified to 1922.

The Court: As I understand the testimony, the 1938 visit mentioned in the answer, he testified in regard to that that takes the place of his testimony of the 1925 visit. There was a visit in 1922.

(Testimony of Edgar A. Sadler.)

Mr. Cooke: I didn't understand that.

The Court: In other words, the transactions which he testified to in the first instance as having occurred in 1925, he later stated those things occurred in 1938 and not 1925.

Q. Well, let us see if we can get that straightened, Mr. Sadler. You remember on your cross-examination you testified something about that he was out there about 1922 and then you mentioned 1925. When he was out there hunting, and then you remembered it was in 1938 he was hunting.

A. I don't think he was out there in 1922. I know he wasn't.

Q. Now is it then your best recollection that it was only 1925 and 1938? [113]

A. '25 and '38 he was also out there.

Q. Those were the two occasions?

A. Yes, those two occasions.

Q. Whether those are the exact years or otherwise, there were only those two occasions since 1918 he was there? A. Yes.

Q. And you were there yourself all the time?

A. Yes.

Q. Now counsel asked you if you knew of the claim of Minnie C. Sadler for some 19 or 20 thousand dollars against Reinhold Sadler and you told him you knew something about it. What is it that you know about that claim?

A. Well, she put in a claim and she got her money, I guess, that's all I know about it.

(Testimony of Edgar A. Sadler.)

Mr. Thompson: We move the answer be stricken on the ground it is assumption.

The Court: The answer may go out.

Q. Tell us what you know about it.

A. Well, all I can recollect the thing was put in and my mother OK'd it and she got her money.

Q. In that claim reference is made to some 1990 odd shares of stock of the Huntington & Diamond Valley Land and Stock Company. Do you know anything about those shares of stock or what happened to those?

A. Well, those shares of stock were transferred over from my [114] father to those people in San Francisco.

Q. Those people?

A. Mrs. Minnie Sadler, the Sadlers down there.

Q. Did your father ever get it back, so far as you know?

A. No, I don't think he ever got it back.

Q. Do you know what happened to the stock, ever sold or what?

A. Well, what I remember, the Bank of California, they had a loan there and they, I guess it was foreclosed, and put the stock up at auction for sale and Minnie C. Sadler bought it in.

Mr. Cooke: Of course, we have a lot of other questions we can ask the witness at this time, but I think it will probably be better on our own case, your Honor.

The Court: Any further questions of this witness at this time?

(Testimony of Edgar A. Sadler.)

Recross-Examination

By Mr. Thompson:

Q. Mr. Sadler, isn't it a fact that that claim that Minnie C. Sadler filed against the estate of Reinhold Sadler for a sum in excess of 19 thousand dollars was rejected by your mother as administratrix?

A. No.

Q. Do you know that?

A. I think that she approved it.

Q. Are you as sure of that as you are of your other testimony in this case?

Mr. Cooke: I object to that. [115]

The Court: Objection sustained.

Q. Do you know that your mother approved that claim? A. Yes.

Q. You do? A. Yes.

Mr. Thompson: That's all.

Mr. Cooke: That's all.

MRS. KATHRYN SADLER

a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thompson:

Q. Will you state your name, please?

A. My name is Kathryn Powers Sadler.

Q. And you are the widow of Alfred Sadler?

A. I am.

(Testimony of Mrs. Kathryn Sadler.)

Q. You are also the appointed and acting administratrix of his estate, are you not?

A. I am.

Q. Where do you live, Mrs. Sadler?

A. 527 Washington Street, Reno, Nevada.

Q. On what date did your husband, Alfred Sadler, die? A. March 5, 1944.

Q. Were you living at 527 Washington Street in Reno at that time? A. Yes, I was. [116]

Q. Shortly after the death of your husband, Alfred Sadler, did you examine his personal effects?

A. I did.

Q. And who assisted you at that time?

A. My daughter, Helen Payson.

Q. I show you Plaintiff's Exhibit 8, Mrs. Sadler, have you seen that before? A. I have.

Q. And when did you first see it?

A. When I was looking over the papers and my daughter was helping me and she found this particular paper.

Q. Where were the papers located that you were looking over?

A. They were in a satchel. Alfred always kept all these documents in a clothes press off from our bedroom.

Q. And you and your daughter Helen took the papers out of the satchel and you found Exhibit 8 among them, is that correct? A. Yes.

Q. Do you recognize the handwriting on Exhibit 8?

A. I do. That is Alfred's handwriting.

(Testimony of Mrs. Kathryn Sadler.)

Q. The body of the letter?

A. The body of the letter.

Q. I call your attention to Alfred Sadler, the signature at the bottom of that agreement, Exhibit 8, in whose handwriting is that?

A. That's Alfred's [117]

Q. I call your attention to the signature Edgar Sadler at the bottom of the agreement. Exhibit 8, do you recognize that signature? A. Yes, I do.

Q. And whose signature is it?

A. Edgar's.

Mr. Cooke: Just a moment. I object on the ground no proper foundation has been laid.

The Court: I think that is true.

Mr. Thompson: I will withdraw the question.

Q. Mrs. Sadler, how long have you known Edgar Sadler?

A. I have known him since 1925.

Q. And during that period of time have you had occasion to see letters coming in the mail from Edgar Sadler? A. Yes, I have.

Q. And approximately how many such letters have you seen? A. Well—

Q. Would there be many letters or just a few?

A. A few.

Q. A few each year? A. Yes.

Q. Approximately how many each year?

A. Well, maybe two or three.

Q. Did you see Edgar Sadler's signature to those letters? A. Yes, I have [118]

Q. Are you familiar with his signature?

A. Yes.

(Testimony of Mrs. Kathryn Sadler.)

Q. In your opinion in whose handwriting is the signature "Edgar Sadler" at the bottom of Exhibit 8?

Mr. Cooke: Objected to on the ground no proper foundation laid.

The Court: Objection overruled. You may answer the question.

Q. The signature of Edgar Sadler, in whose handwriting is that, in your opinion?

A. That is Edgar's signature.

Q. I show you Plaintiff's Exhibit 20 for identification, Mrs. Sadler, where did you see that before?

A. That was among the papers in Alfred's satchel.

Q. This Exhibit 20 was among the papers you found in the satchel? A. Yes, it was.

Q. Were there other papers in the satchel, too?

A. There were a good many papers.

Q. Do you recall the character of any of them, that is, what type of papers they were?

A. Well, they were all pertaining to the ranch.

Q. What ranch do you refer to?

A. Diamond Valley Ranch, Eureka, Nevada.

Mr. Thompson: You may cross-examine. [119]

Cross-Examination

By Mr. Cooke:

Q. Mrs. Sadler, I understood you to testify that your daughter found this particular document, that is Exhibit 8 that counsel showed you, that she found that particular paper or document first, is that right?

(Testimony of Mrs. Kathryn Sadler.)

A. She was with me, yes, she found it in the satchel.

Q. She was the first one that saw it, is that right? A. Yes, she was.

Q. This satchel contained, you told us, quite a number of papers? A. A good many.

Q. Some related to the ranch and some other, I suppose?

A. Well, all of them related to the ranch.

Q. How many papers were there in that satchel?

A. Well, I couldn't say how many.

Q. Can you give us any idea of the approximate number?

A. I don't believe I could because there were so many.

Q. Well, would you say a hundred or a thousand or anything of that sort?

A. I would say there was a hundred or over.

Q. Did he have any other papers besides this particular sack or satchel?

A. Not that I know of.

Q. That was the only assortment of papers?

A. Yes. [120]

Q. Pertaining to his affairs that you found?

A. Yes.

Q. And they all related to this ranch?

A. Yes.

Q. You examined them and read them all over, did you? A. I read most of them over.

Q. And those papers are still extant, I suppose, they are still in your possession?

A. In Mr. Kearney's possession.

(Testimony of Mrs. Kathryn Sadler.)

Q. The lawyer, Wm. M. Kearney?

A. Yes, except the one on exhibit.

Q. He is your attorney in the administratrix proceeding? A. He is.

Q. He has the whole sack, is that right, or just this one paper?

A. He has some papers and I have some and there are some here on exhibit.

Q. Some that came out of that sack?

A. Yes.

Q. Aside from Exhibit 8, which was the paper counsel showed you, do you recall any other papers that came in here as exhibits that were in that sack or satchel?

Mr. Thompson: Objected to, if your Honor please, because I am sure the witness does not know what papers are on exhibit here. I suggest that Mr. Cooke show her the papers. [121]

Mr. Cooke: I don't think that I have to do that.

The Court: We will go along a little further on this and see what develops. Objection overruled.

Q. Can you answer the question, Mrs. Sadler, as to what other papers went in as exhibits here that came from that sack or satchel?

A. All these papers that have been exhibited.

Q. They came from that sack?

A. They did.

Q. Did you ever see Edgar write his name?

A. No, I don't think I have seen him write his name.

(Testimony of Mrs. Kathryn Sadler.)

Q. All you know about his signature is that letters came to you from him? A. Yes.

Q. And there was the name of Edgar or Edgar Sadler at the bottom? A. Yes.

Q. You inferred that they must have been signed by him? A. Yes.

Mr. Cooke: I think that is all.

Mr. Thompson: That is all, Mrs. Sadler. [122]

MR. CLARENCE SADLER

the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thompson:

Q. Will you state your name, please?

A. Clarence T. Sadler.

Q. You are the plaintiff in this case, Mr. Sadler? A. I am.

Q. Where do you live?

A. 566 The Alameda, Berkeley, California.

Q. How long have you resided in Berkeley, California?

A. Since approximately, well, since 1927.

Q. Are you married? A. I am.

Q. What is your wife's name?

A. Doris Reba Sadler.

Q. By what name is she commonly addressed?

A. As Reba.

Q. That is R-e-b-a?

A. That is correct.

(Testimony of Mr. Clarence Sadler.)

Q. When were you married?

A. November 4, 1922.

Q. When were you born?

A. May 24, 1891.

Q. Where were you born?

A. Eureka, Nevada. [123]

Q. You are a brother of Edgar Sadler, the defendant in this case? A. I am.

Q. Where were you in the latter part of the year 1917?

A. The latter part of the year 1917 I was in the army.

Q. And where were you stationed at that time?

A. Well, the latter part of 1917, in September, I was called to Princeton in the aviation section around their ground school and following my graduation from Princeton we went to a field outside of Hempsted, New York, and were stationed there until the first part of 1918, when we were transferred to Gershner Field, Louisiana, for flying.

Q. I show you Exhibit 3, Mr. Sadler, Plaintiff's Exhibit 3, which is a power of attorney from you to Alfred Sadler, is that your signature on that exhibit? A. It is.

Q. Prior to March 2, 1918, or at any time, did you revoke this power of attorney?

A. I did not.

Q. Was it still in effect during the year 1918 and during all of that year?

A. It was in effect until the date of my brother's death, March 5, 1944.

(Testimony of Mr. Clarence Sadler.)

Q. Where were you during the first part of the year 1918?

A. The first part of the year 1918 I was stationed at Gershner [124] Field, Lake Charleston, Louisiana, camp near Lake Charleston, Louisiana.

Q. I show you Plaintiff's Exhibit 21 for identification, do you recognize that exhibit?

A. I do. I received this through the United States mail from Mr. Henderson, attorney at law, Elko, Nevada, in the latter part of January, 1916.

Q. And where were you at that time?

A. I was in Washington, working at the United States Senate.

Q. Was there anything enclosed in that letter at the time you received it?

A. There was. It is a copy of the complaint filed by the Huntington & Diamond Valley Land & Stock Company against the heirs of Reinhold Sadler, including myself.

Mr. Thompson: I offer the letter in evidence, your Honor.

Mr. Cooke: The offer is objected to, if the Court please, on the ground that it purports to be a communication from one C. B. Henderson to Clarence Sadler, Washington, D. C., enclosing, foreshadowed by counsel's question, a copy of the complaint in the quiet title suit, I presume, the one brought in 1915, this being dated January 22, 1916. It is not connected in any way with the defendant in this case and Mr. C. B. Henderson has no connection with the case, so far as the defendant is concerned. He was attorney for the Huntington Company [125]

(Testimony of Mr. Clarence Sadler.)

in that suit, so that by no practice I am familiar with can this be used as being evidence in support of or against Mr. Edgar Sadler.

The Court: What is the theory?

Mr. Thompson: Purely preliminary, your Honor. It shows that Mr. Clarence Sadler was notified of the commencement of the quiet title action and will be followed by testimony of other correspondence.

Mr. Cooke: It is immaterial.

The Court: Well, it will be admitted in evidence for the purpose stated, Exhibit 21.

PLAINTIFF'S EXHIBIT No. 21

Charles B. Henderson
Attorney at Law
Elko, Nevada

January 22, 1916.

Mr. Clarence Sadler,
Washington, D. C.
c/o Congressman E. E. Roberts.

Dear Sir:—

I inclose herein a certified copy of complaint and summons in the case of Huntington and Diamond Valley Stock and Land Company vs. The Huntington Valley Stock and Land Company, et als., being a suit recently brought here by the plaintiff corporation to quiet title to certain land in Eureka, White Pine and Elko Counties. I inclose with this

(Testimony of Mr. Clarence Sadler.)

certified copy of complaint and summons, an appearance, together with stipulation granting you forty days' time to plead to the complaint. If agreeable to you would you sign the stipulation and appearance and return to me in order to avoid the unnecessary costs of publication of summons. If, however, it is not agreeable I wish you would please return the certified copy of Complaint and Summons, together with the stipulation and I will proceed to get service by publication. If the time granted herein is found not to be sufficient I would be willing to grant reasonable additional time in view of your absence. However, I imagine that Mr. Edgar Sadler will appear as he has been served and, no doubt, make the necessary arrangements for most of the defendants.

I am making this request, simply to save as much of the costs in the matter as possible as I am not disposed to cause any of the parties to this suit any unnecessary expense in the matter.

Very truly yours,

/s/ C. B. HENDERSON.

H/W.

inc.

[Endorsed]: Filed Oct. 15th, 1946.

Q. Mr. Sadler, at about the same time that you received Exhibit 21, did you receive another letter?

A. I did. It was—

(Testimony of Mr. Clarence Sadler.)

Q. Just a minute. In whose handwriting was that letter?

A. Mr. Alfred R. Sadler's, my brother at Reno, Nevada.

Q. By whom was it signed?

A. Signed by Alfred R. Sadler.

Q. Do you now have that letter?

A. I have not.

Q. What did you do with it?

A. It was destroyed when I was ordered overseas.

Q. About when was that?

A. In the latter part of the summer of 1918.

Q. And about when was it that you received this letter from [126] Alfred R. Sadler?

A. Well, as a matter of fact, I think I received it a few days prior to the time I received this letter from Mr. Henderson. Inasmuch as I was no longer connected with Mr. Roberts at the time—Mr. Henderson addressed his letter to Congressman Roberts and it took time for the letter to get to my residence address. It was forwarded afterwards by Mr. Roberts' office to me.

Q. Do you recall the substance of the statements contained in the letter from Alfred R. Sadler?

A. I do.

Q. What were they?

Mr. Cooke: Objected to as irrelevant and incompetent. No evidence to establish or tend to establish a claim from Edgar Sadler against Clarence Sadler. It is hearsay. There is nothing binding on Ed-

(Testimony of Mr. Clarence Sadler.)

gar Sadler. One co-tenant cannot make representation binding upon his co-tenant and that is all this purports to be.

The Court: Objection will be overruled.

A. In the letter it stated that suit had been filed by the Huntington & Diamond Valley Land & Stock Company against the heirs of Reinhold Sadler and others and that a copy of the complaint would undoubtedly be served on me.

Q. Did he say anything—

A. (Interrupting): He also mentioned the fact that he was [127] making arrangements to employ the firm of Cheney, Downer, Price & Hawkins, or that the arrangement had been completed, to represent us in the suit, that is, the heirs of Reinhold Sadler.

Q. In June of 1916 what did you do?

A. In June of 1916 I returned to Nevada.

Q. And how long did you remain in Nevada?

A. I remained until after the election was over, some time in the latter part of 1916, when I returned to Washington to resume my position.

Q. At that time did you have any discussion with Alfred R. Sadler regarding the quiet title suit?

A. I had several discussions with him. I think one time I discussed it with Alfred in the presence of Mr. Cheney.

Q. That was some time between June and December of 1916? A. That is correct.

Q. Do you recall where that conversation took place?

(Testimony of Mr. Clarence Sadler.)

A. Well, it took place—you mean the Cheney conversation? It took place in Mr. Cheney's office. At that time I had all the ranch papers with me. I brought them over from Carson and Alfred and I kept them—

Mr. Cooke: Object to that as not responsive to the question. Move to strike.

The Court: I think that is true. That portion may go out. [128]

Q. What was the conversation at that time?

Mr. Cooke: Objected to as irrelevant and incompetent and hearsay. There must be some limit.

The Court: That is something rather serious, I think.

Mr. Thompson: Depends on what he means by hearsay.

Mr. Cooke: Defendant objects first on the ground it is hearsay, purports to be merely a talk between this witness and another party not our agent and not in any way authorized to speak for us, in any sense whatsoever. We object to it on the further ground that it is asking for testimony by this witness in regard to discussions and conversation with Alfred Sadler, since deceased, and would be in violation of statute 9066, I think, the so-called dead man rule.

Mr. Thompson: We withdraw the question, your Honor.

Q. When did you next leave Nevada, Mr. Sadler?

A. Well, I returned to Washington in the latter part of November or early December.

(Testimony of Mr. Clarence Sadler.)

Q. That is 1916?

A. That is correct, 1916.

Q. And thereafter did you receive any letters from Albert Sadler?

A. I did, a number of them.

Q. Do you recall a letter which you received in December, 1917, or January, 1918?

A. I do. [129]

Q. And in whose handwriting was that letter?

A. In the handwriting of Alfred R. Sadler.

Q. Was it signed by him? A. It was.

Q. Do you have the letter now?

A. I have not.

Q. Where is the letter?

A. It was destroyed at the time I was ordered overseas.

Q. Do you recall the substance of the contents of that letter?

Mr. Cooke: Just a minute. I wish to renew the objection.

Mr. Thompson: He can answer that yes or no, your Honor.

Mr. Cooke: All right.

A. Yes.

Q. Will you relate the contents of the letter?

Mr. Cooke: We object to that on the ground that this is calling for conversation of a deceased person. If the document were here, it could be put in evidence as testimony as to genuineness, we make no question of that, but the question of whether he

(Testimony of Mr. Clarence Sadler.)

received a letter from Alfred Sadler and the letter being not available so that we can view the handwriting to see its genuineness and the witness testify he got a letter from Mr. Alfred Sadler and Alfred Sadler said so and so, is purely within the rule forbidding testimony of a transaction by a witness with a person since deceased. [130] That same principle, I think, was involved in the case of Bradley v. Allied L. & L. S. Co., decided by the Supreme Court of Nevada a few years ago, where the question of the receipt of a letter by the deceased was in issue there the same as here, and the argument was made and referred to by the Supreme Court that if the deceased were alive he could deny sending that letter, hence said the court, in effect, the witness being asked to testify to something that the deceased being able to deny if he had been alive, the case was within the statute. That is my recollection of it, but it would seem to me that purely based upon the statute itself, his offer here is inadmissible.

The Court: The only concern I have about it is the fact would it resolve itself into statement of what was stated by a person now deceased.

Mr. Thompson: Your Honor, I have no doubt Mr. Cooke has cited you correct facts, but the title is not correct. In fact the case is Maitia vs. Allied Land & Livestock Company, 49 Nevada 451. In that case the witness, Grand Miller, was permitted to testify that he had written, addressed and mailed a certain letter to a deceased person and a copy of the letter was admitted in evidence. The objection

(Testimony of Mr. Clarence Sadler.)

was made on the ground of the dead man statute and the Supreme Court held that the testimony was properly admitted because the test being that the deceased person, if he were alive to testify, could not have denied that Mr. Miller did write, address and mail a letter addressed to him as testified to by him, and he also testified that he received no reply to that letter. Now that is the holding in that particular case. However, the Nevada Supreme Court, in reaching that decision, cited and relied upon and quoted at length from the case of Dillon vs. Gray, 87 Kansas 129, 123 Pacific 878. That case involved a suit to enforce a trust on the assets of an estate. The assets were the proceeds of the sale of a farm which the deceased person had promised to devise to the plaintiffs if they would live on the farm and care for him. They did so for ten years. The proof of the contract consisted of the oral testimony of the receipt of two letters by the plaintiffs in the handwriting of the decedent, in which the offer was made. The letters had been lost and secondary evidence of their contents was admitted. The court said:

“The plaintiffs’ evidence showed that the letters, which were the only written memoranda of the contract, were not in existence. Secondary evidence was offered as to their contents. This evidence was competent, and abundantly supports the finding made by the court as to the substance of the letters and that a contract

(Testimony of Mr. Clarence Sadler.)

of the terms stated was in fact entered into. The facts in this case are very like [132] those in Anderson vs. Anderson, 75 Kansas 117, 88 Pac. 743, 9 L. R. A. (N. S.) 229. There the only memorandum of the contract was a letter which was lost, but the contents were proved by a person who had seen and read the letter several years before he testified."

Now I call your Honor's attention to Sec. 8964 of the Nevada Compiled Laws, which provides that: "Where the original of a document has been lost or destroyed secondary evidence of its contents is admissible." Now we have proved the loss or destruction of this letter received from Alfred Sadler. The test is whether Alfred Sadler, if he were alive, that is the test under the dead man statute, whether Alfred Sadler, if he were alive could deny the statements made by Clarence Sadler. Here is what he states. He states he received a letter through the United States mails, that in his opinion that letter was in the handwriting of Alfred Sadler. If we had the letter present, your Honor, that letter would be admissible. Mr. Sadler could identify the handwriting and we could offer the letter in evidence. Now the only problem involved is, is secondary evidence of a letter admissible? The dead man statute is taken care of and Mr. Sadler in this case—

The Court: Here is the thought that runs through my mind. It does not apply at all to this case or any of the parties that concern this case.

(Testimony of Mr. Clarence Sadler.)

What nicer way or more subtle way of avoiding the rule against testimony of statements of deceased persons than to have a case presented by a witness who is not at all too concerned with the truth, testify that at a certain time a letter was received from him that contained a certain statement. Isn't that one of the things that the statute was designed to prohibit?

Mr. Thompson: I do not believe so, your Honor, for this reason: the statute itself is fundamentally an enabling statute. The statute eliminated the common law disqualification of a party as a witness. At common law a party to the action couldn't testify at all. Mr. Sadler couldn't testify. Now the purpose of the statute is to eliminate the disqualification of a party. Then they put an exception in there which was not an exception at common law, that a party to the action is incompetent to testify to a transaction with a deceased person. Now the Supreme Court of the State of Nevada has held that that exception should be strictly construed, that the purpose of the exception is to prohibit the establishment of false and fraudulent claims against the estate of deceased persons. Of course, our statute is broader than the average statute dealing with that subject matter because it has the special section that a party is incompetent to testify to a transaction with a deceased person, but I have pointed out that the Supreme Court, [134] in the case of Maitia against Allied Land & Livestock Company, rely on the case of Dillon vs. Gray, which is a direct

(Testimony of Mr. Clarence Sadler.)

holding in our favor that secondary evidence of this letter from a deceased person is admissible. Now I have their holdings to the same effect, if your Honor would like to hear them.

The Court: Let us take that up later at 2:00 o'clock this afternoon. The court will be in recess until 2:00 o'clock this afternoon.

(Recess taken at 12:00 o'clock.)

Afternoon Session, October 15, 1946, 2:00 P.M.

Appearances the same as at morning session.

Clarence Sadler resumed the witness stand.

Mr. Thompson: I have the other authorities for your Honor.

The Court: Yes, I would like to get some information on this point. Now in regard to the authorities that you have already mentioned, that 123 Pac. 878, you made a statement from that case that the matters there testified to were matters which the decedent, if alive, could not deny.

Mr. Thompson: That is right, your Honor. [135]

The Court: Now how about this instance, as far as that part is concerned. If the testimony of Mr. Clarence Sadler, in response to this question, was that the deceased stated certain facts and related the facts stated in the lost letter, wouldn't that be the testimony of something that the deceased might deny if he were alive? Supposing the deceased were alive and a letter alleged to have been written by him was also alleged to have been received and lost and secondary evidence was introduced as to its

(Testimony of Mr. Clarence Sadler.)

contents, couldn't the person who it was claimed wrote that letter take the stand and deny that he wrote such a letter?

Mr. Thompson: That is right, your Honor. The same thing is true if the letter were present. If we had the letter which Alfred Sadler wrote to Clarence Sadler and Alfred Sadler is now dead and Clarence Sadler testified that he received the letter in the mail and that in his opinion it is the handwriting of Alfred Sadler, the letter would be admitted under the decisions of our own Supreme Court. Now if Alfred Sadler were alive, he could deny that he wrote that letter, but he cannot deny the testimony of Clarence Sadler that in Clarence Sadler's opinion that letter was in the handwriting of Alfred Sadler and there is the distinction on which this rule for admissibility [136] of that evidence is based. Now when you get that far, the only other subject is production of secondary evidence and that is provided for when the original is proved to be lost or destroyed.

The Court: Before you launch into your argument, I would just like to suggest to you a point about which I am in doubt. This statute is 8966: "No person shall be allowed to testify when the other party to the transaction is dead." That is the only part of that statute that is applicable to this situation, isn't it?

Mr. Thompson: That is right, your Honor.

The Court: Then the question arises, is Mr. Alfred Sadler, the deceased person, another party

(Testimony of Mr. Clarence Sadler.)

to this particular transaction involved here? What is the transaction we are interested in here and isn't Mr. Alfred Sadler another party to that transaction? That is another question.

Mr. Thompson: I think as I understand the decisions of our Supreme Court, your Honor, the transaction specified in the statute is not limited to the subject of the action itself, the particular contract or agreement. Under the case of Forsythe vs. Heward, for example, the Court laid down a broad definition of a transaction to include any negotiations or [137] dealings with a deceased person and I think we would be bound by that interpretation of the section, and as I understand it, under that interpretation a communication by letter from one person to another is a transaction just as a conversation is.

The Court: So then this subdivision 1 of this section is applicable here.

Mr. Thompson: I believe it is applicable, your Honor, but I believe that the testimony in the form presented as we offer it is not objectionable under that section, because the court has laid down, as a rule of demarcation whether the deceased person could deny the testimony of the witness and we are not offering anything which Alfred Sadler, if he were alive, could deny.

The Court: I might state that during the recess I read that Kansas case and there is a case cited in there where admission of testimony was allowed, but

(Testimony of Mr. Clarence Sadler.)

in the opinion there is a citation to the effect that the contents of the letter were not given. Now that is Bryan v. Palmer, 111 Pac. 443, cited 123 Pac. 878.

Mr. Thompson: Yes, but the principal case itself, Dillon vs. Gray, is a case in which oral testimony as to the contents of lost letters by a deceased person was permitted.

Mr. Cooke: Mr. Thompson, may I ask you a question?

Mr. Thompson: Yes.

Mr. Cooke: Have you discovered any difference between the Kansas statute and the Nevada statute on this?

Mr. Thompson: I can't answer that because I don't know the exact provisions of the Kansas statute, but I point out in the Nevada case, Maitia against Allied, this case of Dillon vs. Gray was cited as principal authority for the ruling in that case in interpreting the Nevada statute.

The Court: Now will you just go over again the Dillon vs. Gray case so that we can make sure that the contents of the letter was there disclosed or allowed to be introduced.

Mr. Thompson: Well that case, your Honor, was an action to enforce a trust for the benefit of the plaintiff on the assets of a decedent's estate. The assets of the estate were shown to be the proceeds of the sale of a farm that the deceased person had owned. The plaintiffs claimed that about ten

(Testimony of Mr. Clarence Sadler.)

years previously the decedent had written them some letters—they were residing in another state—requesting them to come and live on the farm and take care of it and take care of him and promising if they did so they would have the farm upon his death, the decedent's death. The evidence showed that this couple, man and wife, did move from the state where they were living to the farm of the decedent and lived with him and cared for him for those ten years, until his death. Now in order to establish the contract, the plaintiffs offered their own testimony as to the contents of the letters which the deceased had written to them in the first place, in which he promised to give them the farm if they would come and take care of him and the court admitted that evidence. I will read another paragraph from the opinion, your Honor, one that I didn't read this morning. The court said:

“There is nothing substantial in the claim that the court erred in permitting the plaintiffs to testify to transactions with the deceased in contravention to the statute. It was proper for Mrs. Dillon * * *”

She was one of the plaintiffs:

“* * * to state that they moved to the farm and resided there. The testimony did not relate to any personal transaction with Andrew Gray * * *”

(Testimony of Mr. Clarence Sadler.)

Andrew Gray was the deceased:

“* * * The Plaintiffs testified to the receipt of the letters addressed to them in Alabama, postmarked in Kansas, and that in their opinion the letters were in the handwriting of Andrew Gray. This was competent. If he had been living he could not have testified that plaintiffs did not receive the letters so postmarked, or that in their opinion the handwriting was not his. This is said to be one of the tests as [140] to whether or not the matter is a transaction within the statute.”

And then it cites some cases and then the other part of the opinion I read says that secondary evidence was offered to prove the contents of the letters, not the letters themselves.

The Court: Weren’t the contents of those letters concerning a payment that was supposed to have been paid?

Mr. Thompson: Not as I read the case, your Honor. While we are waiting, your Honor, I might state some of these other authorities:

Williston vs. Williston, 41 N. Y. Supreme Court Reports Barbour’s 635.

The court permitted an interested witness to testify to the contents of a lost letter which was in the handwriting of a deceased person. The court said:

“Suppose the letter had not been lost but had been produced upon the trial. There could not be a question as to its competency. The

(Testimony of Mr. Clarence Sadler.)

evidence of its contents upon admission of its loss is only another mode of producing the paper that it may speak for itself, in the same manner and with the same effect, that it would have done had the letter itself been present."

In the case of Simmons vs. Havens, 101 New York 427, 5 N. E., [141] the court held a party to an action could testify to the contents of a lost deed executed by the deceased person.

In the case of Erwin v. Fillenwarth, 160 Iowa 210, 137 N. W. 502, the court permitted an interested witness to testify that she had seen certain things in a box in the home of her deceased father and to testify to the contents of the box. As to competency of this testimony, the court said:

"* * * but it will be noted that nothing the witness testified to was of the communication or transaction with decedent. The box was on the table and was not shown to have been in the decedent's possession when he took it, nor does it appear that the witness examined the contents by permission or that the decedent handed the box to him for that purpose. He appears to have examined the contents on his own motion and the court rightly ruled that the testimony did not disclose a personal transaction or communication."

In the case of Scott vs. Brenton, 168 Iowa 201, 150 N. W. 56, it was held a party to an action against a municipality might testify as to the contents of a contract between himself and the dece-

(Testimony of Mr. Clarence Sadler.)

dent. The court observed that the burden was upon the parties objecting to the competency of the witness to show that the reading of the contract by the plaintiff was a personal transaction, unless it otherwise [142] appears from the circumstances.

"It is not shown that plaintiff's mother was even present at the time he testifies he saw her signature and the contents of the writing. She may have left the house, or the contract may have been fully executed at some prior time at another place."

From the facts of the case there was reason to assume that the witness could have obtained his knowledge after the transaction with the decedent had passed.

I have some other citations, but I do not have quotations from them, your Honor. It is our view, your Honor, that under the dead man statute the testimony which we seek to elicit from Clarence Sadler is admissible and competent. Your Honor has raised the point that that would be an obvious way of evading the dead man statute, but we suggest that that comment goes more to the weight which your Honor might give to such testimony than to its admissibility under these rulings and if the testimony so elicited fits in with the other testimony in the case, the other evidence, we assume that your Honor would give it credence; otherwise, your Honor might be at liberty to disregard it, but that objection pertains to the weight that your Honor would give to the testimony.

(Testimony of Mr. Clarence Sadler.)

Mr. Cooke: If the Court please, the question of admissibility of evidence cannot be disposed of by saying that [143] the evidence is admissible and the objection goes to the weight. It is either admissible or it is not. If it is admissible, then it is in here for all that it is worth, and if it is inadmissible, with the suggestion the court may consider it for what it is worth, etc., is not any solution at all. We used to have a justice of the peace in Tonopah, that your Honor may have known at one time. He wasn't very learned in law or anything else really and he did have some very serious tests down there and some of the questions before him would have probably puzzled a man on a higher bench, but this old judge, whenever any question came up that had to do with admission of evidence, he said "That goes to the weight of it and not admissibility" and made his ruling accordingly. That does not solve the question. I want to call your Honor's attention to facts in this matter it seems to me are worth considering. The Supreme Court in the Maitia case ruled, as we know, that Mr. Grant Miller, who was and still is in Reno, testified that he had sent a letter to Mr. Fairchild, who had previously been cashier of the Stock Growers Bank here and had in the meantime and before he died been appointed assignee for the benefit of creditors and Mr. Miller representing some of the creditors had occasion to send a communication to Mr. Fairchild and he testified that he wrote a letter, kept a carbon copy of it, and mailed it postpaid

(Testimony of Mr. Clarence Sadler.)

and that upon the left-hand corner of the envelope was return direction and the letter was never returned. [144] The objection was made that that was within the dead man's ruling but the Court said that the dead man, Mr. Fairchild, could not have denied that Mr. Miller wrote such a letter, could not have denied he had mailed it and could not have denied that carbon copy, couldn't deny there was that instruction upon the envelope, "Return in 5 days to A. Grant Miller," so that disposed of the objection. That was confirmed by the Supreme Court. Now the court did cite the Kansas case and a Wisconsin case and to my mind there is a difference in the provisions of the statute and that is why I called Mr. Thompson's attention to that. The Kansas statute reads differently from the Nevada statute.

The Court: Mr. Cooke, I don't want to interrupt. I see a distinction—I might be wrong in thinking, seeing a distinction in these two cases. Miller testified he mailed a letter and produced a carbon copy of the letter and that was admitted in evidence, wasn't it?

Mr. Cooke: Yes, over objection.

The Court: Here the difference is we may hear from the witness a statement of the contents of the letter. It is in effect testimony by a deceased person. Now then, the point that is bothering me is testimony on the part of Alfred Sadler, who would not be subject to cross-examination. [145]

(Testimony of Mr. Clarence Sadler.)

Mr. Cooke: No, there is no question about that. That is the vice of it and that is the danger of it.

The Court: As I understand these two cases, the Kansas case and the Maitia case, that point isn't at all covered by any of these cases.

Mr. Cooke: No, I don't think any of the Nevada cases has the same point we have here or the same factual situation, but in view of the fact that the Kansas cases have been urged upon the court, I wanted to call attention of the court that the Kansas statute provides differently from the Nevada statute, "No person shall testify in regard to a personal transaction." It is quoted in one of the opinions here, but that is the difference. In our statute that subdivision 1, there is no such provision. Now in a subsequent Kansas case, where they refer to Daniels, and this case counsel has cited, they discuss this question about the letter, and so on and the court says:

"It may be said that it was a communication or transaction, but was it personal in character as the statute provides?"

They accentuate the personal requirement of their statute, as distinct from ours, which does not contain anything of that kind.

"It was not written by Miller in the presence of the witness nor handed to her by him. When finished it passed from him to the possession of the post office [146] department, and

(Testimony of Mr. Clarence Sadler.)

it was obtained by the survivor Hoss from this intermediary. There was no personal touch between the parties when the letter was written or received. In limiting the disqualification to personal communications and transactions between one person and another, since dead, the legislative purpose evidently was that, when one of the parties is silenced by death, the other shall be silenced by law, thus placing both sides on an equality. One of the tests of exclusion applied is, could the deceased, if living, have denied the offered testimony? What occurred when the letter was received would have been outside his knowledge, and he could have given no testimony in contradiction of it."

Right there I might interpolate that if Alfred Sadler was alive and Clarence testifies what the contents were, no one could deny that Alfred Sadler could deny he wrote such a letter.

"To be personal * * * * "

The Supreme Court is continuing, refers to that personal requirement:

"To be personal the communication or transaction must have been made or had when the parties were face to face so that what was said or done in the presence of each other could not be related by one after the other [147] had died. A case quite closely in point, so close that it seems to be controlling, has been determined by that court. In *Bryan v. Palmer*, 83 Kan. 298, 111 Pac. 443, an action was brought by an

(Testimony of Mr. Clarence Sadler.)

administrator of the estate of King to recover on a note which defendant had given King. The defense was that the money had been enclosed in a letter in another state and forwarded by mail to King in his lifetime, and a receipt was enclosed with it for King to sign. At the trial after King's death, defendant testified as to the enclosing of the money in the envelope with the receipt, and taking of it to the postoffice, and also the receipt acknowledging payment of the money. It was held that the testimony was not prohibited by the statute since what was done and said by the defendant when he was hundreds of miles away could not be regarded as a personal communication or transaction. So here, Miller was not an immediate party to the transaction about which the testimony was given, had no personal knowledge of what was done by Hoss when she received and read the letter, and, if living, he could have given no evidence in contradiction of these facts."

And so on. Now the same is true as to Daniels against Foster, a Wisconsin case, which seems to be a more or less leading case, but this case, the Moore case, from which I am reading, [148] 240 Pac. at 853, I am reading from page 855 that refers to the Dillon vs. Gray case, which counsel has cited, and they go on to say:

"The letters, which were the only written memoranda of the contract, had been lost, and secondary evidence of their contents was given

(Testimony of Mr. Clarence Sadler.)

by the witness. The letters were received in Alabama, postmarked in Kansas, and he testified they were in the handwriting of the decedent. It was held that the testimony did not relate to a personal transaction * * ”

Your Honor will note they are all the time talking about personal transaction which we are not concerned with at all.

“* * * that the decedent, if living, could not have testified the letters were not received or that in the opinion of the witness they were in his handwriting; and hence the testimony was held to be admissible.”

Then refers to the Daniels case, Wisconsin:

“* * * * it was held that a defendant might testify that he received a letter purporting to have been written by the testator, that it could not be regarded as a communication or transaction had personally with the deceased, and therefore did not come within the prohibition of the statute.”

Evidently Wisconsin had the same requirement that the transaction be a personal one, in a face to face transaction. [149]

“It was held that a personal transaction or communication means one made face to face by parties in the actual presence and hearing of each other, and, further, that the witness could testify that he was familiar with the handwriting of the deceased and that the letter was genuine.”

(Testimony of Mr. Clarence Sadler.)

I submit that the Kansas cases, under that statute, are of no help to us.

The Court: Well in this Kansas case Mr. Thompson, that is cited in the first one that you read and that first case is a case exactly in point. I am reading from Dillon vs. Gray: "A case exactly in point is Bryan v. Palmer, 83 Kan. 296, 111 Pac. 443." That caused me to look up Bryan v. Palmer. Here is some of the testimony: "When by death, insanity or lunacy the lips of one party are closed, Sec. 3639 of the Code wisely closes the mouth of his adversary as to personal transactions and communications which the silent party might, through personal knowledge, deny, were he able to speak. Personal transactions and communications, as contemplated in the statute, are transactions and communications between parties, of which both must have had [150] personal knowledge." Then the court goes on dealing with the case at hand: "Some of the testimony relating to the preparations made for transmitting the money, and also of obtaining possession of the receipt, closely approach the border line of incompetency; but, considering the spirit and intent of the statute, substantially all of the testimony objected to was admissible. The witness, it is true, spoke of sending a letter to and receiving one from King * * *" King is the deceased person: "* * * and also stated that the letter received had been destroyed, but there was no attempt to show the contents of the letters. It may

(Testimony of Mr. Clarence Sadler.)

be said, too, that most of the challenged testimony was well supported by other testimony." So here we have a statute that contains this statement which, as I understand it, is conceded applicable here: "No person shall be allowed to testify when the other party to the transaction is dead." The testimony would have to deal with his transaction of sending and receiving of this letter. It seems to me perfectly proper that the witness could testify as to receipt of the letter and give his opinion as to the handwriting [151] being in the handwriting of the deceased, but the stumbling block in my mind is whether or not he can go further than that and show the contents of it.

Mr. Thompson: Well, I don't want to take time to repeat our views on that, your Honor. I think—

The Court: Isn't that in effect causing the deceased to testify here in court, of course without any opportunity of cross-examination. That isn't the idea of the statute. The idea is the opposite party to a transaction can not testify and the aim of the statute is, because the deceased would have no opportunity to deny that party's testimony as to the transaction. I am going to admit the testimony, with the understanding that counsel may urge the objection and offer any authorities he might find on the question.

Mr. Cooke: There is another ground, that it is hearsay as to us.

The Court: The only ground I am worried about is the one discussed. Objection is overruled as to

(Testimony of Mr. Clarence Sadler.)

both grounds, with the privilege of moving to strike and to reargue the point later on. [152]

Mr. Thompson: To save time, I will ask the question over again, your Honor.

Q. Mr. Sadler, you had testified that in January of 1918 you received the letter which was in the handwriting of your brother, Alfred Sadler, is that not correct? A. That is correct.

Q. And that that letter was destroyed when you were ordered overseas? A. That is correct.

Q. Will you please state the substance of the contents of that letter?

Mr. Cooke: I suppose we are required to renew our objections to keep the record straight.

Mr. Thompson: We will stipulate the objection goes to this question.

Mr. Cooke: And same ruling and same exception.

The Court: That is right, same ruling and same exception.

A. Alfred advised in that letter that the attorneys representing the defendants were conferring on some kind of agreement for settlement stipulation.

Q. Subsequently did you receive another letter in the mail? A. I did.

Q. And about when was that?

A. It was about the middle of February. [153]

Q. Of what year? A. 1918.

Q. And in whose handwriting was the letter?

(Testimony of Mr. Clarence Sadler.)

A. It was from Alfred R. Sadler. The letter was sent through the United States mails.

Q. Was it signed by him? A. It was.

Q. Do you have that letter?

A. I have not.

Q. What happened to it?

A. It was destroyed when I was ordered overseas.

Q. Do you recall the substance of the contents of that letter? A. Yes.

Q. What were they?

Mr. Cooke: The same objection, your Honor, as to the last offer.

The Court: Same ruling.

A. Alfred advised me that the attorneys had reached an agreement and that the estate of Reinhold Sadler, the heirs of Reinhold Sadler, were to pay the Huntington & Diamond Valley Land & Stock Company \$15,000 in addition to other matters, such as the claim of Minnie C. Sadler, would not be pressed against the estate and that my mother and my sister would sign papers releasing certain lands to the Huntington & Diamond Valley Land & Stock Company for consideration for the property [154] to be transferred, and it was also stated in the letter that the attorneys for the Huntington & Diamond Valley Land & Stock Company had agreed that the Sadler estate could designate the parties to whom the land could be transferred, the legal title, the Diamond Valley Ranch.

(Testimony of Mr. Clarence Sadler.)

The Court: I think I will reverse the ruling. The objection will be sustained and all the testimony will be stricken and that will go also to the offered exhibit that was also introduced. There was one here this morning to which objection was made. To reconcile it to the statute, to my mind it is the testimony of a deceased person.

Mr. Thompson: There are only two letters he has referred to, your Honor.

The Court: The ruling will be reversed. Objection sustained and all testimony in regard to these two letters be stricken.

Q. Mr. Sadler, when did your mother, Louisa Sadler, die?

A. She died in August, 1923.

Q. And prior to her death did you have occasion to see her handwriting? A. Yes.

Q. How frequently?

A. Oh, a great many times. She used to write me continuously. [155]

Q. I show you Plaintiff's Exhibit 20 for identification. Will you state in whose handwriting that is?

A. That is in my mother's handwriting.

Mr. Thompson: I offer Exhibit 20 for identification in evidence, your Honor.

Mr. Cooke: I would like to ask the witness a question.

The Court: You may do so.

(Testimony of Mr. Clarence Sadler.)

Q. (By Mr. Cooke): Mr. Sadler, referring to this letter that counsel just showed you, and particularly calling your attention to the date, February 29, 1918, is there any change in that body of the letter, any addition there, indicating that that has been changed, the date?

Mr. Thompson: I think the letter speaks for itself, your Honor.

A. I don't notice any change in it. Oh, I notice a little heavier ink, is that what you have reference to?

Q. Yes. Would you say that something had been written on top of something else there?

Mr. Thompson: I object to the question on the same ground—

The Court: Objection overruled.

A. No, I wouldn't say something has been written there on top of it. It may show up by a magnifying glass, but by the naked eye— [156]

Q. Have you the envelope containing this letter?

A. No, sir, I have not the envelope. Mrs. Kathryn Powers Sadler produced that letter. Mrs. Kathryn Powers Sadler found that letter in Alfred's personal effects.

Mr. Cooke: We object to the letter, first upon the ground that it appears on the face of it that there has been some change or mutilation in respect to the year and maybe the date of the month and the same has not been satisfactorily explained by the witness. We object to it on the further ground

(Testimony of Mr. Clarence Sadler.)

that it merely purports to be a communication from Mrs. Sadler to Alfred Sadler and that nothing that Mrs. Sadler could say would be evidence for or against the defendant in this case; that she was not authorized to make any statements that would be binding upon him, therefore, the entire document is hearsay so far as Edgar Sadler is concerned. That the evidence also is irrelevant and immaterial, not tending to prove any issue in the case.

The Court: Objection will be overruled and the exhibit admitted in evidence as Plaintiff's Exhibit 20.

PLAINTIFF'S EXHIBIT No. 20

Carson City Feb. 29, 1918.

Dear Alfred:

Bertha and Myself wanted you and Edgar to write a agreement for how long you wanted the Morgage of the Diamond Ranch and Cattle. You have to pay me \$50.00 per month and say who has to pay the money to me, and what date, so I am sure of the money. We want this in black and white so in case something should happing to you or Edgar, we will have no trouble like with the Sadlers in the City and be sure of our property, and sell the Ranch for what it is worth at the end of that time and devide the money accordence to the Will, and you have to look out for Clarence to. Edgar will have to pay for Clarence Insurance on his Police in May 24. if he is still in the Army, for Bertha says,

(Testimony of Mr. Clarence Sadler.)

she is not able to pay it, she paid out so much for Clarence. Edgar had all the income from the Ranch and he must pay it. You and Edgar should make another agreement to each other in black and white so you know what each one has to do, and in case something happing that you are safe of your property and money.

Allway make yourself safe in business so you will have no trouble later on. We had a good snow storm last night. Be careful and do not work in the Store and were yourself out, you work enough when you work in your Office, you did not look as well as Christmas time, take care of your health and rest enough the few cent what you get for been in the store don't help you, so goodby.

Lose and kisses from Bertha and Myself. Aunt Biroth is very sick again Clara was called home again.

Your Loving Mother
L.S.

[Endorsed]: Filed Oct. 15, 1946.

Mr. Thompson: Your Honor has read the exhibit?

The Court: Yes, I did read it.

Q. I show you, Mr. Sadler, Plaintiff's Exhibit 8. When and where did you first see Plaintiff's Exhibit 8?

A. I first saw Plaintiff's Exhibit 8 in Carson City in May or [157] June of 1918. I personally

(Testimony of Mr. Clarence Sadler.)

got my mother's tin box out from her bureau drawer and in that box was this agreement.

Q. And that is Exhibit 8?

A. That is correct.

Q. Whose handwriting appears on Exhibit 8?

A. The body of the handwriting is in Alfred R. Sadler's handwriting and he also signed it, together with Edgar Sadler, my other brother.

Q. Are you familiar with the signature of Edgar Sadler?

A. Yes, I received letters from Edgar or letters that Alfred turned over to me with his signature on.

Q. In your opinion is the signature "Edgar Sadler" at the bottom of Exhibit 8 in the handwriting of Edgar Sadler? A. Yes.

Mr. Cooke: Objected to on the ground no proper foundation has been laid.

The Court: Objection will be overruled.

Q. When was it your mother Louisa Sadler died, Mr. Sadler?

A. She died in August, 1923.

Q. And do you know where she had been residing prior to her death?

A. After my sister Bertha died, Alfred took her to Grass Valley, where she resided until her death.

Q. For how long a period was she at Grass Valley, do you know?

A. Well, I wouldn't say; over a year. [158]

Q. Where was your mother, Louisa Sadler, buried?

(Testimony of Mr. Clarence Sadler.)

A. She was buried in Carson.

Q. Carson City, Nevada?

A. In the family plot.

Q. Were you in Carson City, Nevada at the time of her funeral?

A. I came from Washington with my wife to attend the funeral services.

Q. Where were you living at that time, you and your wife?

A. We were living in Washington.

Q. Washington, D. C.?

A. That is correct.

Q. Were any other members of the family present at your mother's funeral?

A. Of the immediate family there was Edgar and Alfred and there were other relations.

Q. At that time did you have any conversations regarding the Diamond Valley Ranch?

A. We did.

Q. Who were present at the conversations?

A. Edgar, Alfred, my wife Doris Reba Sadler, and myself.

Q. Where did those conversations take place?

A. They took place in the house at Carson City, 310 Mountain Avenue after my mother's funeral and after all the other relatives departed.

Q. Will you relate the conversation as you recall it? [159]

A. Well, we asked Edgar and Alfred what disposition would be made of the ranch now that my mother had died and they said that they were going

(Testimony of Mr. Clarence Sadler.)

to try to sell the ranch and divide the money between the heirs of Reinhold Sadler. My wife asked Edgar Sadler what my approximate share would be at that time and he replied approximately \$15,000.

Q. Was there any further conversation with regard to selling the ranch?

A. There was. Edgar said when he returned to the ranch he would make an effort to dispose of the ranch if he could obtain a reasonable price.

Q. What did you and your wife Doris Sadler then do?

A. You mean after we left Carson?

Q. Yes.

A. Why I went to San Francisco and Los Angeles and returned to Washington via Denver. I didn't get back into Washington until November of that year.

Q. How long did you reside in Washington, D. C.?

A. Well, I resided in Washington, D. C., until January of 1924, when I was transferred to the San Francisco office of the Federal Trade Commission.

Q. Did you visit the Diamond Valley Ranch in the year 1925?

A. Well, my wife and I both visited there.

Q. Do you recall the month of the year?

A. We were there in the latter part of July or early August. [160] I think it was the latter part of July of 1925.

(Testimony of Mr. Clarence Sadler.)

Q. When you were present at the Diamond Valley Ranch at that time did you have any conversations with Edgar Sadler regarding the ranch?

A. I did.

Q. Who was present during the conversations?

A. Well, at one conversation Edgar was present, his wife Ethel was present, and my wife Doris Reba Sadler was present, and I was present.

Q. What was the substance of the conversation, as you recall it?

A. The substance of that conversation was the sale of the ranch and we discussed putting it on the market and at that time I asked Edgar what would be a reasonable price for the ranch, in order that I could place the ranch in the hands of real estate people in San Francisco and Los Angeles, and Edgar said a reasonable price would be \$75,000 for the ranch, exclusive of the cattle.

Q. Did he say anything about the value of the cattle?

A. We didn't say anything about the value of the cattle. We didn't discuss the value of the cattle because they could be sold immediately on the market at the market price and that wasn't discussed.

Q. When you and your wife left the ranch, where did you go?

A. Went into Salt Lake and from Salt Lake into Baker, Oregon, [161] and continued into Portland and Seattle. I was making investigations for the Federal Trade Commission.

(Testimony of Mr. Clarence Sadler.)

Q. I show you Plaintiff's Exhibit 22 for identification. Will you state what that is?

A. Yes, that is copy of a letter I sent to Alfred after our conversations with Edgar at the ranch in 1925.

Q. And in whose handwriting is that?

A. That is in my own handwriting.

Q. Did you address and mail the original of which this is a copy to Alfred?

A. I did, and sent it by mail.

Q. Where was he living then?

A. Living in Reno.

Mr. Thompson: We offer Exhibit 22 for identification in evidence.

Mr. Cooke: May I ask the witness a few questions?

The Court: You may do so.

Q. (By Mr. Cooke): Mr. Sadler, the document you just testified about, being copy of letter from you to Alfred, dated August 4, 1925, appears not to have been signed and has been attached to some other sheet. Do you notice up in the corner there?

A. Yes, sir.

Q. Was there any other portion of the letter? Is that all, or was there some more? [162]

A. Yes, there was more of it.

Q. Where is the other part?

A. The other part of this letter?

Q. Yes.

A. I didn't make a copy of the other part. I wrote on the original letter, "With kindest re-

(Testimony of Mr. Clarence Sadler.)

gards," signed it, and I didn't put it on the back.

Q. You mean that is all the letter that you wrote at that time except "with kindest regards?"

A. That is all I recall.

Q. That is on the second sheet?

A. Yes, sir.

Q. How did that come to be taken off of there, do you know? A. Yes. The second sheet?

Q. Yes.

A. There was no second sheet. This letter was attached to one from Alfred.

Q. What was it written on, "With kindest regards?"

A. On the yellow sheet, the same as that paper.

Q. And these holes up here, you held the yellow sheet with this sheet here?

A. That indicated that the letter was attached to the letter I received from Alfred in reply to this letter.

Q. I am trying to find out where that yellow sheet went to, part of this letter, "With kindest regards." [163]

A. That was on the original letter, sir.

Q. What original letter?

A. That I wrote to Alfred. This is copy of the original.

Q. This is copy of it attached?

A. That is it.

Q. A correct copy with the exception it hasn't got "With kindest regards?"

A. I think that is all, yes.

(Testimony of Mr. Clarence Sadler.)

Mr. Cooke: We object to the admission in evidence of the document on the ground it purports to be a copy of letter written by witness to his attorney in fact, Alfred Sadler, and that any statements made in that way could not be evidence against Edgar Sadler. All a person familiar with that rule need do would be to write a letter for evasion and later on put it in evidence and prove his case. I would like to add to this objection, your Honor, that this evidence, and all this type of evidence, is inadmissible and incompetent because its only purpose would be to modify, change and alter the relation established by the judgment in the case of Huntington & Diamond Valley Company against various defendants, these persons here, Edgar and Alfred Sadler and others, on March 2, 1918. That that judgment is res adjudicata as to the rights of the parties, not only as between the plaintiff and defendant, but as between the defendants themselves, which would in this case be Alfred and Edgar and the other Sadlers, [164] and that these letters are simply a part of an attempt to upset that judgment and change the legal relations created by that judgment. We call attention, for instance, to the rule of court, which has the force of statute and I suppose would be applicable to federal court as well as State court, that no judgment may be modified, changed, or altered in any way after the expiration of six months. This is not stated to be a proceeding to alter the judgment, but that is the effect of it. The judgment, as we maintain, is

(Testimony of Mr. Clarence Sadler.)

res adjudicata and it is absolutely conclusive, and in no proceeding, direct or indirect, no matter how ingenuously it may be covered up or concealed as to purpose, can the court or the parties be permitted to change the rights established under that judgment after the time allotted for that purpose has expired. For instance, in the case of Wellington vs. Washoe County Bank, which is rather a prominent case in federal history in this State, there were several defendants there as we have here, and in that case they did not serve cross-bills as against each other, but the court held that the judgment in that case, which was a foreclosure suit as I recall, was binding and conclusive as between the defendants, even though there were no cross-bills filed. They had the opportunity to litigate it between themselves, but not having done so, the judgment is conclusive, and in this case the judgment rendered on March 2, 1918, established and adjudicated that Edgar and Alfred Sadler were [165] the owners of this property and that was done pursuant to a stipulation and a stipulated judgment at least had as much force and effect as a judgment upon evidence, and while no cross-bill was served in this case by Alfred Sadler upon Edgar Sadler, or vice versa, under the rule of Wellington against Washoe County Bank that is not necessary. In all cases the judgment becomes conclusive as between rights of parties, irrespective of whether any cross-bill is filed or not. They had that opportunity, so the way we see it, if Clarence Sadler or any other

(Testimony of Mr. Clarence Sadler.)

defendant had any claim on this property, then was the time to file it, and not having asserted it, they lost all right to do so and they are now asking your Honor in effect, it seems to me, to reverse the judgment of the court; in other words, disregard the judgment. So we make the point the whole matter is foreclosed by res adjudicata and particularly as laid down in the Wellington vs. Washoe County Bank case, which if your Honor desires, I will read it.

The Court: Objection will be overruled and the exhibit admitted in evidence as Plaintiff's Exhibit No. 22.

PLAINTIFF'S EXHIBIT No. 22

Salt Lake City, Utah
Aug. 4, 1925.

Dear Alfred:

Just a few lines to let you know where we are. We arrived in Ogden on the 25th of July and came over here on the 29th. We expect to leave here on Sunday the 9th for Boise Idaho where I have some work which will keep me there about a week. Our address will be General Del. Boise, Idaho for the next ten days.

We both enjoyed our trip to the ranch and feel much better after our vacation. While we were there I had a chance to go duck hunting a couple of times and sage hen hunting once. We caught around 75 young ducks and killed 20 sage hens over at the Henderson ranch. Reinhold took Ethel and

(Testimony of Mr. Clarence Sadler.)

us over to Edgar Lane Plummer's one afternoon where we met Mrs. Plummer, Neva, Edgar and his wife. Edgar is sure big boy now. We took some pictures a couple of which I am enclosing so you can see how the boys have grown.

I had a talk with Edgar about the ranch and the property in Eureka. He says that he is willing to sell if we can get \$75,000. He intends to come to Reno and have a talk with you about everything after the hay is put up. He told me that Mother received \$1400 for the Opera house and about \$900 for the house. I was surprised to learn that. Mother sold the stock in the Prospect Mountain Tunnel. Edgar said that she received \$1300 for it. This is sure interesting as I never heard anything about it. He also said that he can get \$8400 for some of the mines if the Sadlers will sell. When I go back to San Francisco I will see Herman and try to get him to write Edgar a letter saying that he is longer interested in the mines.

[Endorsed]: Filed Oct. 15, 1946.

Q. (By Mr. Thompson): I show you Exhibit 23 for identification, Mr. Sadler, what is that?

A. That is the letter I received from Alfred Sadler.

Q. In whose handwriting is the letter, including the signature?

A. It is in my brother Alfred's handwriting and the signature [166] is Alfred Sadler's.

(Testimony of Mr. Clarence Sadler.)

Mr. Thompson: I offer the letter in evidence, your Honor. Part of the matter relates to other matters, part of it relates to the ranch.

Mr. Cooke: One more thing I would like to ask the witness.

The Court: You may do so.

Q. (By Mr. Cooke): On the second page, Mr. Sadler, this word here, I can't make that out—"Supposed to receive from the estate——"

A. That has to do with some mining claims, Mr. Cooke.

Mr. Cooke: We make the same objection, your Honor, they are communications from Alfred Sadler to Clarence Sadler with reference to certain business matters between them and that it is not evidence as against the defendant, Edgar Sadler, and it is hearsay.

Mr. Thompson: If the Court please, it is a lengthy letter. Perhaps I could read the part that we think is pertinent to the case.

The Court: All right.

Mr. Cooke: I might say especially the first part of it there, that I imagine you want to read, is the part I want to object to.

Mr. Thompson: I am just doing this to point out the part, Mr. Cooke. The judge is going to read the letter [167] anyway. (Reads):

"Dear Clarence:

"A few lines to let you know that we are still alive and making the best of conditions in this section.

(Testimony of Mr. Clarence Sadler.)

"I received a letter from Edgar about a month ago and things were not going as well up in that section as he would like to see them. Now in regard to the ranch will say that we have to renew notes and mortgage on the same to the amount of \$10,000. \$5,000 was borrowed from the bank in Eureka and \$5,000 from the bank in Winnemucca. We made the deal thru Jerry Sheehan and no doubt he will get the money from the Federal Loan Department. Had to buy 500 head of sheep as there is not enough cattle to keep the same going and no doubt will do better by having some sheep as they pay better than cattle. Of course, having sheep is more work but the returns are better.

"No changes of ranch property seem to have been made lately and it looks as if the big outfits do not desire to acquire more. In fact quite a few of the big outfits are selling off their holdings to smaller outfits as the cost of feeding on the ranges has advanced by the Government wanting fees to range cattle on government land unsurveyed or surveyed in the Public Land States."

The Court: It may be admitted in evidence as Plaintiff's Exhibit 23. [168]

Q. One matter, Mr. Sadler, I wanted to clear up. Calling your attention to Plaintiff's Exhibit 22, Mr. Cooke asked you about the stapling marks in the upper left-hand corner of the letter. Do you

(Testimony of Mr. Clarence Sadler.)

recall how you had the letters marked when you handed them to Mr. Springmeyer and myself?

A. I was going to offer that explanation after the Judge was through reading the letter. I put exhibit numbers on these letters when I sent them to Mr. Thompson and attached a plain piece of paper with the exhibit number. I did that so there wouldn't be anything on the letter proper.

Q. I show you Plaintiff's Exhibit 24 for identification, Mr. Sadler, will you state what it is?

A. That is letter I received through the United States mail from my brother Alfred and it is signed by Alfred.

Q. It is in his handwriting? A. It is.

Mr. Thompson: We offer the letter in evidence, your Honor, and will read the part we deem to be material. Is that satisfactory? The letter is dated September 14, 1927.

Mr. Cooke: Well, I would like to see it.

Mr. Thompson: Well, I thought I could save time. It takes 15 minutes for you to read the letter and 15 minutes for the Judge to read the letter.

Mr. Cooke: Before anything is read in evidence I insist on seeing it. [169]

Mr. Thompson: I am not reading it in evidence, your Honor.

The Court: Point out to him that portion you desire to have in evidence.

Mr. Cooke: I would like to read it all, your Honor, it all goes in evidence.

(Testimony of Mr. Clarence Sadler.)

The Court: You may do so, certainly, go ahead and read it.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of the offer of letter which is dated September 14, 1927, marked Plaintiff's Exhibit 24 for identification, on the ground it is irrelevant and immaterial and it is merely a statement by hearsay as to the defendant Edgar Sadler, statement from Alfred Sadler to Clarence Sadler, partly in regard to the ranch's condition. I make this objection consistently and in good faith because it seems to me that it is a good and valid objection. It is consistent with the rule. My view of it is that the fact it is writing does not take it out of the hearsay rule and it is just essentially hearsay when it is in the form of a letter as it would be if Clarence here testified he met Alfred Sadler on the street here and Alfred told him these things and he comes in and testifies that Alfred told him so and so. That is the way the thing impresses me. I am merely making that statement to your Honor as a reason why I have been so insistent upon the hearsay objection to these communications [170] between the parties and not brought to the attention of Edgar Sadler in any way and not made by anybody who is authorized to speak for him. Alfred Sadler was not authorized to bind Edgar Sadler in respect to the ranch or make statements to Clarence Sadler that would be evidence against Edgar. That is the basis of my objection to these documents, so far as hearsay objection is concerned.

(Testimony of Mr. Clarence Sadler.)

Mr. Thompson: If the Court please, as we view the case, we have shown by strong evidence that Alfred Sadler and Edgar Sadler were co-trustees of the impressed trust. These letters constitute reports of a trustee to the beneficiary of the conditions of the property. They show the interest of the beneficiary in the property and I submit that we cannot see anything that is ruling as to whether a trust has or has not been proved before we produce our evidence.

The Court: That was the thought that I had in mind in overruling that objection, the fact that they were co-tenants. The question is to be determined whether they were trustees or not, but they are co-tenants. Do you want to point out, Mr. Thompson, the portion of that letter that you want in evidence?

Mr. Thompson: If the Court please, we offer the entire letter because the whole letter aids in showing its genuineness, [171] but there is just a portion of it that we rely on regarding the property. The entire letter, relating to other things, shows the genuineness of this whole document, but the portion that we particularly refer to in this letter dated September 14, 1927, is as follows:

“Edgar sold his sheep that he bought a year ago but did not get a extra good price for the same. I judge that he concluded that unless they had 3000 head it would not pay to raise the same. I think that he had only 500 and

(Testimony of Mr. Clarence Sadler.)

just broke even on the same. The expenses of looking after them cost so much per month with a man to herd the same. He did not say what he got but I saw a piece in the paper that he sold for \$10 a head. He is still cutting hay in the big meadow and trying to see if he cannot sell some of the hay this winter.

"Nothing doing in Eureka as yet and so many leaving that there is no market for things up there."

PLAINTIFF'S EXHIBIT No. 24

Sept. 14, 1927.
Reno, Nevada

Dear Clarence:

A few lines to let you know how things were going in this section.

The town has been somewhat dull after the Exposition and just now getting normal again. Because the University and school has started up.

We have had frosts for the last three or four mornings and it sure played havoc with the farmers raising produce. No doubt this cold spell will cause the potatoes and vegetables a raise in price for the general public.

Edgar sold his sheep that he bought a year ago but did not get a extra good price for the same. I judge that he concluded that unless they had 3000 head it would not pay to raise the same. I think that he had only 500 and just broke even on the

(Testimony of Mr. Clarence Sadler.)

same. The expenses of looking after them cost so much per month with a man to heard the same. He did not say what he got but I saw a piece in the paper that he sold for \$10 a head. He is still cutting hay in the big meadow and trying to see if he cannot sell some of the hay this winter.

Nothing doing in Eureka as yet and so many leaving that there is no market for things up there. The paper states that they hope that mining will start up again.

I wrote to him to send you the data in regard to the ranch so that you would have same and perhaps could find a buyer down in that section. Edward has started walking good now and sure is getting into everything that it keeps us pretty busy so that he will not break things.

Mr. Cessna left Sept. 3, 1927 on his trip to Florida. First he is taking in Yellow Stone Park. I guess he expects to get to Florida about September 20. He says that this trip he planned will take him about two months. He is doing the traveling in his car.

Mr. Powell of Washington, D. C. came and secured your address as he expects to see you in California about Sept. 20. He went to Law School with you in Washington. He said that he just secured his divorce here. No doubt he will make you a call before he returns back east.

I hope that Reba enjoyed the visit of her folks from the south.

(Testimony of Mr. Clarence Sadler.)

We are all in fair health and hope the your family is enjoying good health. Nothing else of any interest happening around this section. With love and kisses from us all to you all.

Your Brother

ALFRED

[Endorsed]: Filed Oct. 15, 1946.

The Court: We will be in recess now for 10 or 15 minutes.

(Recess taken at 3:30 p.m.) [172]

3:40 p.m.

CLARENCE SADLER

resumed the witness stand on further direct examination by Mr. Thompson.

Q. I show you Plaintiff's Exhibit 25 for identification, which consists of a letter dated at Reno, Nevada, January 18, 1929, and another letter dated at Eureka, Nevada, December 22, 1928. Will you state what that exhibit is?

Mr. Cooke: There are two letters. Which one are you talking about now?

Mr. Thompson: We are offering them as one exhibit.

A. The letter dated January 18, 1929, is letter I received through the United States mails from my brother, Alfred, and it is his signature.

Q. And his handwriting?

A. Yes sir. And the letter dated December 22,

(Testimony of Clarence Sadler.)

1928, is a letter addressed to Alfred Sadler and signature of Edgar Sadler and this latter letter was transmitted with the letter of January 18, 1929, by Alfred Sadler to me.

Mr. Thompson: I offer the letters in evidence, your Honor.

The Court: It may be admitted in evidence, the two letters, as one exhibit, No. 25.

Mr. Cooke: I would like to state our objection, if the Court please.

The Court: You make the same objection? [173]

Mr. Cooke: We make the objection to the letter —there are two—one there is a special objection to. As far as the letter from Edgar Sadler to Alfred Sadler, dated December 22, 1928, included in the offer is concerned, the only objection we have to make to that is that it is irrelevant and immaterial and contains nothing that has any bearing whatsoever in regard to the issues in this case. We object to the remaining portion of the offer, being the letter from Alfred to "Dear Clarence," which is dated January 18, 1929, on the ground it is hearsay as to the defendant, Edgar Sadler, and that a co-tenant has no legal authority to make any statement binding on his co-tenant, nor has a trustee any authority to bind his co-trustee. I add that to my objection in the light of what counsel stated and from time to time gave as his purpose. We have authorities on that that neither co-tenant nor co-trustee has qualifications to make statements of a subject matter binding upon the other.

(Testimony of Clarence Sadler.)

The Court: Objection will be overruled and exhibit admitted as Exhibit 25.

PLAINTIFF'S EXHIBIT No. 25

Eureka, Nevada
Dec. 22, 1928

Dear Alfred:

Received your letter and contents noted as to the Land patents. Are the new F. Mau Land 640 acres and 75.88 acres of mine which cost to patent \$726.93, which I had to have this for the Loan. The land you sent me is over by the alpha field. 160 acres. In regard to the Eureka Tunnel sale they only want to pay \$9300 for the whole thing. All of the stock and it is sure a mix up as they want all of the stock and a quite claim deed also signed by all. So it will take some time to get all this together as the Mau and Sadler have common stock and preferred stock. Herman has 2000 preferred and 10200 shares of stock and I guess the Mau the same. And in our stock we have Mother had 5000 common and 5000 Preferred stock and Father has 4000 Preferred stock the stock I have here so there must be more stock some place of ours. Only 600 outside people. So you can see be about a 1/3 apiece of the Bond. There is 2 certificate of stock in this bunch that is not fill out no 249 common. 250 Preferred.

Send you a quart of Beef last mail. Will write again soon.

Your Brother,
EDGAR SADLER.

(Testimony of Clarence Sadler.)

Reno, Nevada.

January 18, 1929

Dear Clarence:

Your letters received and contents noted. I want to thank you for the Xmas presents that you and Reba sent me and the family. We had a Xmas Tree and all enjoyed the same. Edward acted as Santa Claus by giving the presents out.

I thank you for the Birthday present of the box of cigars that you folks sent and have enjoyed the same. Ethel and Violet only stayed one day at the house and I saw very little of them except at meals. She said that John had failed in physical Exam for his position and was working in California. They have a apartment at his mothers. If he does not find work in California no doubt he would go back to the Ranch. It now looks as if the leasing or taking care of Johns Ranch will fall thro because no doubt he will have to go back to the ranch unless he can find a position in California. I thank you for the Cong. Record but did not find anything in the same because the Interior Bill is in conference of House and Senate Committe, and do not know what changes they will do with the bill. Liable to be some changes in heads when Hoover makes his cabinet. I hope they get broad men at the Heads and cut out their economy system.

Kathryn is now giving a few parties in Honor of her Aunt. I guess she will have about 4 so that she can play even with the people that have been so nice to her in different ways. You did not get the

(Testimony of Clarence Sadler.)

point straight from my letter. Edgar paid off the local or state banks what was borrowed from them. But a loan was made from the Federal Reserve Land Bank of Berkeley, California of \$15000 to run a long period at 6%. To do the above and do general improvement. This spring he is going to do a lot of reseeding of some of the fields and also repairing of fences and buildings on the place. Should a chance to sell come up then the people wanting to buy can pay so much cash and assume the loan from the Federal Reserve Land Bank.

It looks as if he is going to have a hard time in making the deal with the Eureka Smelting Company. I enclose his letter that I received awhile back. It does not explain how he is going to make the deal in regard to the Eureka Tunnel.

We have been having some real cold weather up in this section but the last day or so the wind has been blowing therefore look for some snow. The mountains are quite short of snow about 40% of the normal fall. Therefore unless we have some storm water is going to be scarce. The legislature will start next Monday and then no doubt the papers will have some news to give the general public. I think there is going to be some changes in regard to gambling and divorce.

The folks are all enjoying fair health now. The children are getting along pretty good.

Mineral work or mining has not shown any activity as yet in the state and is sure on the bum. You ought now to be able to make a little on your

(Testimony of Clarence Sadler.)

land down in Clark County since the late turns have taken place for the Big dam to be built.

Nothing of any special news taking place at present.

With love and kisses from us all, hoping you, Reba and Bruce are doing well.

Your Brother,

ALFRED.

[Endorsed]: Filed Oct. 15, 1946.

Q. I show you, Mr. Sadler, Plaintiff's Exhibit No. 26 for identification, will you state what that is?

A. That is a letter I received through the United States mail from Edgar Sadler and it is dated April 3, 1929.

Q. And in whose handwriting is the letter?

A. That is in the handwriting of Edgar Sadler.

Mr. Cooke: What is that date?

Mr. Thompson: It is either the 3rd or 8th of April, 1929. I offer the letter in evidence, your Honor, to show that it is friendly in character, friendly dealings between the brothers after the alleged differences of the brothers in 1925, as testified to by Edgar Sadler.

Mr. Cooke: The only objection we have to that is that it is a matter in regard to mining interests that these parties purportedly had in Eureka, nothing to do with the property in question, and that so far as it constitutes evidence as to the attitude of the parties, friendly or otherwise, is too

(Testimony of Clarence Sadler.)

remote and the relationship could be decidedly hostile so far as that is concerned, and still a letter of this kind. It doesn't prove what counsel claims for it.

The Court: It may be admitted in evidence for the purpose stated by Mr. Thompson as Exhibit 26.

PLAINTIFF'S EXHIBIT No. 26

Eureka, Nevada

April 3, 1929

Dear Clarence:

Received your letter about the Eureka tunnel stock ours is in the bank 14000 shares. Has been there for 2 mo. waiting for the other to send theres. Was in town the other day and they had sent it to the bank, but the bank sent it back to them as they wanted more of the bond than they were to get and divided up to different one, as the paper read the Bonds was to go to me and then send back to them so I do not know what they will do. Sadler want \$3100.00 and Mau want \$3333 1/3 worth of Bond which they were not to get as the whole was only \$9300. There is no news up here and has been a cold old winter for 4 mo. now and still a snowing. Will write to Alfred when I hear about it.

Your Brother,

EDGAR.

[Endorsed]: Filed Oct. 15, 1946.

(Testimony of Clarence Sadler.)

Q. Mr. Sadler, do you recall the year your brother Edgar Sadler was a member of the Assembly for the State of Nevada? A. I do.

Q. What year was that?

A. It was in 1931.

Q. Did you visit in Reno, Nevada, at that time?

A. I visited him in Carson and also in Reno.

Q. In what month was that? [175]

A. It was some time in February or March of 1931.

Q. Did you have a conversation with Edgar Sadler in the presence of Alfred Sadler?

A. I did.

Q. Where did that conversation take place?

A. It took place in the Golden Hotel.

Q. That is in Reno, Nevada?

A. Reno, Nevada, in the lobby of the Golden Hotel, yes.

Q. Was any one present other than Edgar and Alfred? A. No.

Q. Will you relate the conversation as you recall it?

A. I asked Edgar and Alfred what settlement they were going to make for the ranch and both Alfred and myself offered to sell our interests—

Mr. Cooke: If the Court please, I object testifying as to transactions of a deceased person.

Mr. Thompson: If the Court please, I call your attention to the same case, Maria vs. Allied Land & Livestock Company, 49 Nevada, 451. In that case the plaintiff testified that one Pete Etchecpar, the

(Testimony of Clarence Sadler.)

president of the defendant corporation, who had an interest in the transaction adverse to the plaintiff, took the plaintiff to see Mr. Fairchild in the Stock Growers Bank, where Fairchild presented a signature page for him to sign and this Mr. Fairchild was dead at the time of the trial. It was held directly by our Supreme Court that the testimony was properly admitted under the statute, because the other person, Etchecopar, who was a party to the transaction on the side of Fairchild, wasn't shown to be dead and that only the death of all the parties on one side of the transaction would close the lips of the parties on the other side of the transaction.

The Court: Objection is overruled. You may answer the question.

(Question read.)

A. Well, both Alfred and I offered to sell our interests to Edgar and he said he was going to take it up with, I believe he said Jerry Sheehan of the Reno National Bank, and we also discussed the question of putting the ranch on the market and I asked Edgar if he would submit certain data, so that I could list the properties in Los Angeles and San Francisco.

Q. What did you mean by listing the properties?

A. With real estate people, for sale.

Q. Did Edgar Sadler make any statement during that conversation? A. As to what?

(Testimony of Clarence Sadler.)

Q. In reply to your suggestion that you would like data concerning the ranch so it could be listed?

A. He said that the data would be furnished to either Alfred or myself.

Q. I show you Plaintiff's Exhibit 27 for identification. Will you state what it is? [177]

A. It is a letter I received from Alfred R. Sadler and it is signed by Alfred R. Sadler. It is his signature.

Q. It is also in his handwriting?

A. It is.

Q. The letter is dated March 8, 1931?

A. Yes, I would say it is.

Q. Is the envelope which is clipped to the letter the envelope in which the letter was received by you?

A. Yes sir, and it is postmarked Reno, March 9, 1931, and that is the envelope in which Alfred's letter was received.

Q. Where were you at that time?

A. I was in Los Angeles, California.

Mr. Thompson: I offer the letter in evidence, your Honor.

Mr. Cooke: The same objection, your Honor, that it is simply a communication from Alfred Sadler to Clarence Sadler. Hearsay as to the defendant, Edgar Sadler. Not admissible for any purpose.

The Court: Same ruling. The exhibit is admitted as Plaintiff's Exhibit 27.

(Testimony of Clarence Sadler.)

PLAINTIFF'S EXHIBIT No. 27

Reno, Nevada

March 8, 1931

Dear Clarence, Reba and Bruce:

A few lines to let you know Kathryn was taken to Mrs. Marsh March 4, 1931—about 8:15 a.m. and the boy was born a little before eleven a.m. Kathryn and the boy are both doing fine.

I am afraid that Kathryn will not be able to nurse him as the milk does not seem to come. The boy gets real mad as he sure wants to eat. Therefore I guess we will have to feed him on the bottle.

He weighed 8½ lbs and seems to be real active and looks like Edward when he was a baby.

Kathryn wrote before she went to Mrs. Marsh and I dropped a few lines but judge those letters are in Berkeley and you will get them on your return.

The children are all enjoying good health and keep one busy. It has been a little cold and windy so they do not want to play out in the yard. I think that his name is going to be George Powers Sadler. Edward says to call him George and Patricia says to call him Sam. Kathryn wants Powers for his middle name, Edgar and Ethel has not said anything further about our talk to Edgar and do not know what he is going to do.

I guess the legislature is getting down to work now and therefore will see very little of Edgar as I have not the time to bum around down town.

(Testimony of Clarence Sadler.)

Glad to hear that you are all enjoying good health and that everything is going as well as possible.

I will give Edgar you address but as yet he has not said whether he is going to California or not. We have no snow or rain and everything is sort of burning up. No doubt things will be dry up this section during summer and fall.

I think you had better write Edgar to send you the data in regard to the ranch and this might sort of force them to say what they are going to do. I will tell him that you expect to be in Los Angeles about two months.

With love and kisses from us all to you all.

Your Brother,
ALFRED.

(Copy of Envelope)

A. R. Sadler	Reno, Nev 2	(Stamp)
92 Bell St.,	Mar 9	
Reno, Nevada	2 - PM	
	1931	

Mrs. Clarence T. Sadler
Apt. 209 - Tarrymore Apartments
974 South Gramercy Place
Los Angeles
California

[Endorsed]: Filed Oct. 15, 1946.

(Testimony of Clarence Sadler.)

Q. Mr. Sadler, in your testimony relating to the conversation which occurred in February or March, 1931, in the Golden Hotel, you mentioned Jerry Sheehan. Who was he?

A. As I recall it, he was connected with the Reno National Bank. Whether he was cashier or vice president, I don't know. [178]

Q. Mr. Sadler, I show you Plaintiff's Exhibit No. 28 for identification, which consists of a two-page letter dated April 6, 1931, with envelope and sheet of paper with some pencil handwriting and some figures on it and the letterhead of the 35th session of the State Legislature, Assembly Chambers for the State of Nevada, with some notations on it in ink. Will you state that exhibit is?

A. Well, the first part of the exhibit is a letter dated April 6, 1931, signed by Alfred, addressed to me, which I received in the United States mails. It is the signature of Alfred and in his handwriting. At that time our office was located in the Flatiron Building in San Francisco, and the envelope is—I just can't make out, it is blurred there, but it is postmarked in 1931.

Q. The "April" is clear, is it not?

A. It is. And the next paper is a statement in Alfred's handwriting and it sets forth certain data in regard to the Diamond Valley Ranch, and the next paper is—

Q. That is on the letterhead of the Assembly Chamber of the 35th Session of the Nevada Legislature?

A. It is.

(Testimony of Clarence Sadler.)

Q. In whose handwriting is that?

A. That is in the handwriting of Ethel Sadler, wife of Edgar A. Sadler, except on the last page appears the words, "not including commission," which is in the handwriting of Alfred R. Sadler.

Mr. Thompson: I offer the Exhibit 28 for identification in evidence, your Honor.

Q. The letter dated April 6, 1931, from Alfred refers to the other papers, does it not, being enclosed?

A. Yes, sir, and the other papers were transmitted with that letter.

Mr. Cooke: May I inquire.

The Court: Yes.

Q. (By Mr. Cooke): The only portion of this Exhibit 28 for identification that is in Alfred's handwriting is, according to your testimony, the concluding portion after what you say is Mrs. Sadler's handwriting?

A. That is correct sir. That is in Alfred R. Sadler's handwriting, "Not including commission," those three words.

Q. What was that answer again?

A. I say three words, "Not including commission" are in the handwriting of Alfred R. Sadler.

Q. Is there any of this in the handwriting of Edgar Sadler?

A. No. It is in the handwriting of his wife, Ethel Sadler.

Q. A portion of it?

A. All except the last three words.

(Testimony of Clarence Sadler.)

Q. This letter here, this is not in her handwriting?

A. The letter addressed "Dear Clarence" and signed by Alfred is in the handwriting of Alfred R. Sadler.

Q. When you say all in her handwriting, you are referring to [180] the enclosure?

A. I am referring to the stationery that bears the Nevada State Legislature here.

Q. With the exception you already stated about those three last words? A. Yes sir.

Mr. Cooke: We object to the offer of Plaintiff's Exhibit 28 for identification in evidence, on the ground that it contains nothing constituting evidence against Edgar Sadler or anything that would bind him; that according to the witness's testimony the latter part of the exhibit, which is addressed to him and signed Alfred, is simply a statement by Mr. Alfred Sadler to Clarence Sadler, neither of them being agents of the defendant, Edgar Sadler, Alfred Sadler having no authority to say anything binding as to Edgar Sadler; that he was not his agent, was not his partner, that he sustained no legal relation authorizing him to speak for Edgar Sadler. The other letter, which the witness states is in the handwriting of Mrs. Sadler is no evidence against Edgar Sadler whatever the contents might be and whatever might be stated there. There is no evidence showing that she was authorized to make any binding declarations against Edgar Sadler. Under the law of this state the husband

(Testimony of Clarence Sadler.)

is the statutory agent for the community property and the business is transacted by the husband and not the wife. [181]

The Court: Do you want to say anything on this question of admissibility of Mrs. Sadler's letter?

Mr. Thompson: No. If your Honor will read the letter from Alfred Sadler, it enclosed this information as having been received from Ethel and Edgar Sadler and it ties in with the conversation which was held in the Golden Hotel in February or March, 1931. The fact that the data is given on the stationery of the Assembly, of which Edgar was a member at that time, is further proof of its genuineness.

The Court: Objection will be overruled. The two documents, the letter of April 6, 1931, from Alfred Sadler and the document attached on the Nevada Legislature letterhead, will be admitted in evidence.

Mr. Cooke: That includes the entire offer?

The Court: Yes, the whole offer, as Exhibit 28.

PLAINTIFF'S EXHIBIT No. 28

Reno, Nevada
April 6, 1931

Dear Clarence:

A few lines to let you know that we are all doing fairly well. The children have pretty fair health and growing.

(Testimony of Clarence Sadler.)

George Powers seems to have quite a bit of colic as yet have not found a baby food that agrees with him. For two weeks or so it was a hard time to get him to take his bottle but now he seems to be doing first rate. He sleeps a plenty and is restless the first part of the night. Kathryn does not seem to recover her strength and is not in the best of health as she has quite a bit of headache and claims of being weak and cannot do everything that she plans to do. Thus it makes her nervous and somewhat cross.

I am doing fairly well, but as yet have not had my teeth taken out but will before long. Mr. Ridgway one of the field engineers had all his taken out and has his false teeth already he is making our real well with them.

Under the new Bill passed by Congress does your department get the Saturday afternoons off the year round. It seems that our branch being outside of Washington, D. C. is considered in the field and so we do not get the Saturday afternoons off. But they are working on the same to give it to us but the President has to make an Executive order. Edgar I guess is not going to take up the proposition of buying the interest in the ranch.

I do not think he can get the money from what he said. I think that he tried to make a borrow from the Reno National Bank but they told him money was too tight. They also told him that they let a sheep man have the Bank ranch in Fish Creek

(Testimony of Clarence Sadler.)

if he would pay interest and taxes on the same to the Bank as they could not run the same at a profit.

I am sending you the data that they sent down to me to send to you send their return to the ranch. They did not take any trip to California as from what Edgar said his expenses were \$250 more than he received from the Legislature and that they did not have the money so much for things in general and I guess Ethel was sore because I told her that you were down in Los Angeles and they had better send the data to you if they did not want to consider the proposition. It looks to me as if they have things tied up and now worrying about cash.

No snow in the mountains and water will sure be scarce this year. Things right at present is sure dry and conditions do not look good. Mining is sure at a stand still and not much doing. Little work in the office nothing else there will close with love from us all to you, Reba and Bruce, Edward would not go along on the ranch with them. Violet did not like to come up to the house because she could not run wild so stayed down at the hotel. Ethel sure did the Society and did not look much after Violet but let her make out for herself. Hoping that you are all well and enjoying good health.

Your Brother,

/s/ ALFRED.

(Testimony of Clarence Sadler.)

Sadler Ranch in Diamond Valley, Eureka County, Nevada, known as the Diamond Valley Ranch.

Patented 3120 Acres.

160 Acres in Alfalfa.

200 acres in tame hay.

80 acres used for garden

300 acres for pasture.

600 acres covered by spring and resvoir.

Balance in pasture and wild hay.

Springs supply 13 second feet of water which runs in the resvoir and ditches. Range land in neighborhood which belongs to Government but used to range cattle from long ususage will run about 600 hundred head of cattle which will have to feed in spring and hard winters.

Ranch could cut 1500 tons of hay but some of the fields need reseeding to bring this up to condition.

They want \$65000 Cash for same.

Commission is not included.

The cattle is not included.

A mortgage of \$13500 is now on the property held by Federal Land Bank. Therefore price of ranch in cash would be \$65000—\$13500=\$51,500 cash.

[Letterhead Nevada State Legislature, Thirty-fifth Session.]

Sadler Ranch in Diamond Valley, Eureka Co. Nevada consists of 3120 acres of patented land, 200 acres of tame hay the balance in pasture and wild hay, running spring of 13 second feet.

(Testimony of Clarence Sadler.)

Cuts 600 ton of hay and could cut more.

Can run from 8 to 900 head of cattle.

Ditches made for all land, fenced with three barbwire fence.

Five room concrete home and fine big stone cellar three feet wide.

Barns, outhouses and corrals all in good condition.

Considered one of the best ranches in Eureka Co. due to unlimited supply of water.

78 miles from main line, 14 miles from narrow gauge and 33 miles from town of Eureka on Lincoln Highway.

Water in spring hot sulphur water would make a wonderful resort.

Price \$65,000—not including commission.

(Copy of Envelope)

[From] Alfred R. Sadler, United States Department of the Interior, Box 433, Reno, Nevada.

(Stamp) Reno, Nevada 2. Apr. 11, 6 P.M., 1931.

[To] Mr. Clarence T. Sadler, Federal Trade Commission, Flatiron Bldg., Market Street, San Francisco, California.—Personal.

[Endorsed]: Filed Oct. 15, 1946.

Q. (By Mr. Thompson): I show you Plaintiff's Exhibit 29 for identification, Mr. Sadler, will you state what that is?

(Testimony of Clarence Sadler.)

A. That is a letter dated April 11, 1931, addressed to me and signed by Alfred and in his handwriting. It was received by me by United States mail.

Mr. Thompson: I offer the letter in evidence, your Honor.

Mr. Cooke: The defendant, Edgar Sadler, objects to [182] the exhibit on the ground that it is hearsay, that it is simply a letter from Alfred to Clarence, principally in regard to the condition of the family and with reference to Edgar I think is in the first two lines and in any event it is subject to the hearsay rule, Alfred's statement not being any person's that could make any record sufficiently binding on Edgar Sadler or constitute any legal evidence against him. No foundation laid for admission in evidence of any such document.

The Court: Objection overruled. The exhibit may be admitted in evidence as Exhibit 29.

PLAINTIFF'S EXHIBIT No. 29

Reno, Nevada

April 11, 1931.

Dear Clarence:

Just a few lines to let you know that I have written to Edgar to send you more data in regard to the ranch.

The assessed value of the property in Eureka County and the rate of taxes per hundred dollars in the county.

(Testimony of Clarence Sadler.)

The price per head he would take for his cattle and the number that could be had on the property.

Also to sends you some snap shots of the Springs and the reservoir that is impounding the water which I hope that they will send to you before you return to Berkeley and while you are still in Los Angeles.

Baby George is gaining now a little each week and doing better in regard to his eating. He is somewhat fussy in the nights but sleeps good in the days. I think that later this will wear off. Judge that it is the colic that bothers him in the nights as he eats too fast. Edward and Patricia are doing real well and like to play outside all the time. Kathryn is having a hard time as they can open the gate and want to go out in front. Then she has to watch them as they are liable to go down to the River or play in the streets. Kathryn is not so well as she worries too much and it seems that she is slow in gaining back her strength and she wants to do things but has not the "pep" or strength and that makes her cross and nervous.

Helen is doing fairly well in her school work but likes to go and play quite a bit and does not like to do as much housework as her mother would like her to do.

The new gambling and six week divorcee bill as yet has shown no improvement of bring any more

(Testimony of Clarence Sadler.)

people here as yet. Of course the gambling will bring some money to the City and County and help pay the taxes in a way.

The building boom is sure taken a drop around this section. It seems that money is tight and hard to get.

The business men are sure kicking as conditions is getting harder and the hard times are hitting this section that has been in the East.

The snow is fast disappearing from the mountains and the River has not shown an extra increase. They claim that June 15 will see the River about dry through the town.

Sorry to hear that Bruce is having trouble with his eye but hope the same will soon disappear. Perhaps by wearing glasses for awhile he would overcome to the same.

You no doubt have been pretty busy with the new case that you are getting data on and sure has given you quite a stay down in Los Angeles. No doubt Reba would like to get back to Berkeley as I guess it must be getting warm down there.

Nothing else of interest therefore will close with love and kisses to all from us all.

Your Brother,

ALFRED.

[Endorsed]: Filed Oct. 15, 1946.

(Testimony of Clarence Sadler.)

Mr. Thompson: The part we were particularly interested in, your Honor, is the part that states: "Edgar, I guess is not going to take up the proposition of buying our interest in the ranch. I don't think he can get the money from what he said. I think he tried to make a borrow from the Reno National Bank but they told him money was too tight."

Mr. Cooke: That has reference to Alfred's interest in the ranch. It is a question if it is a co-tenancy.

Mr. Thompson: You didn't so say in your answer, Mr. Cooke.

Mr. Cooke: There are a lot of things you didn't say in your complaint either.

Q. I show you Plaintiff's Exhibit No. 30 for identification, will you state what that is please?

A. That is a letter dated May, 1931, addressed to "Dear Clarence," signed "Alfred." It is in the handwriting of Alfred Sadler and his signature and I received that in the mails from Alfred Sadler and the envelope attached is rather blurred, but the postmark shows May, 1931, addressed to me, Federal Trade Commission, Flatiron Building, San Francisco.

Q. Is that the envelope in which you received that letter? A. It is.

Mr. Thompson: I offer Exhibit 30 for identification in evidence, your Honor.

Mr. Cooke: Same objection, your Honor. The defendant, Edgar Sadler, objects to the offer on

(Testimony of Clarence Sadler.)

the ground it is simply a communication between Alfred Sadler to Clarence Sadler; no foundation for its admissibility. Nothing to show that Alfred had any authority to make any of the statements in the letter, so far as Edgar Sadler is concerned. It doesn't constitute any legal evidence, anything against Edgar Sadler, doesn't tend to prove or disprove any issue in the case. It is hearsay as to Edgar Sadler.

The Court: It will be admitted in evidence as Exhibit 30. Objection overruled.

PLAINTIFF'S EXHIBIT No. 30

Reno, Nevada
May 8, 1931

Dear Clarence:

Just a few lines to let you know that we have moved from 92 Bell Street to 461 Vine Street.

The new house is a brick building and is larger than the other cottage. There is no fence around the same but it has a good back yard. In the back yard is a garage that we use for a storage place to keep trunks and other things. We have also a wood and coal shed in the back yard and plenty of extra ground for the children to play. I am going to put up a swing for them next week.

The front yard has a nice lawn and more could be put in in front as from the side walk to the curb is a space about ten feet wide which could

(Testimony of Clarence Sadler.)

be put in as lawn. A nice front porch that one can set out in the evenings and also plenty of room for the children to play on. To the south of the house is a lawn that is good size.

Therefore you see that I will have a big lawn to take care of this year. Helen says that she is going to plant some flowers but as yet has not started. A few Apple trees in the back yard, two nice lilac trees in the front yard nice vines that will be in the front porch. Hops will cover the back screen porch this summer. We are paying \$45.00 per month for this place.

It also has a nice cellar for which I am glad as I can get a few sacks of spuds for winter use.

Kathryn can now put up fruit if she wants to and in the cellar will be a nice place to keep the same.

The house has two bedrooms, a large dining room which Kathryn is using for a bedroom.

A parlor and hall which is used as the living room.

Helen has one bedroom. In the other bedroom we have two beds so that Edward has his bed and a bed also for Patricia. These two beds are double beds.

A nice bathroom, a pantry and the large kitchen is used as a dining room and kitchen. A coal range and a gas range in the kitchen. The sink is in the pantry and plenty of selves and things sort of handy in the same.

(Testimony of Clarence Sadler.)

The only bad feature is I cannot go home for noon as the same is about 12 blocks from the office.

I have not heard anything from the ranch or any word from Edgar. Do not know whether he has sent you any more data in regard to same or not.

Send you a clipping from the Journal about Reinhold in taking his 3rd degree in Eureka.

Nothing else of any importance happening in this section. Mining is at a stand still in this state and no mineral work in the office. Working on Township work cannot say as whether the new divorce law has helped or not as yet.

The gambling has sure helped the cafe and hotel people as it sure has brought plenty of people here to buck the same.

Women are now allowed to go an gambling and they have sort of fixed up places so that they can do the same.

Kathryn is not in the best of health and seems slow about getting back her strength and lacking "pep" but after sort of getting settled I now no doubt she will be better satisfied and show improvement. Love from us all to you all.

Your Brother,

/s/ ALFRED,

Box 433, Reno, Nevada.

(Testimony of Clarence Sadler.)

(Copy of Envelope)

From A. R. Sadler, Box 433, Reno, Nevada.

(Stamp) Reno, Nev. 2, May 8, 6 P.M., 1931.

[To] Mr. Clarence T. Sadler, Federal Trade Commission, Flatiron Building, Market Street, San Francisco, California.—Personal.

[Endorsed]: Filed Oct. 15, 1946.

Q. I show you Exhibit 31 for identification, Mr. Sadler. Will you state what that is?

A. That is a letter dated May 20, 1931, addressed to "Dear Clarence," signed "Alfred." It is in the handwriting of my brother, Alfred R. Sadler, and his signature appears on the letter and that letter was received by me from Alfred by United States mail.

Mr. Thompson: I offer Exhibit 31 for identification in evidence, your Honor.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of Plaintiff's Exhibit 31 for identification, on the ground the same is immaterial, no proper foundation laid for its admission in evidence, and that it isn't shown that the party writing same, to-wit, Alfred Sadler, had any authority to make any statements or representations binding or constituting legal evidence as to Edgar Sadler, and that the document is hearsay as to Edgar Sadler.

The Court: The objection will be overruled and exhibit admitted as Exhibit 31.

(Testimony of Clarence Sadler.)

PLAINTIFF'S EXHIBIT No. 31

Reno, Nevada
May 20, 1931

Dear Clarence:

Just a few lines to let you know that we are getting along fairly well and making the best of condition. We are about settled in the new house and find the same much better than the one on Bell Street. I do not go home from the office for lunch but take a sandwich for my lunch and go to the 5 and ten store for a drink.

The children have plenty of room to play and doing fairly well as there is no fence. They keep off the street in front of the house but play quite a bit on the side street. I have put up for each of them a swing and it is sure used by them and the neighbor children. The front porch is fine in the evenings, nice and cool and plenty of room on the same. Enclosed find a check for Ten which is to buy something for your birthday. Plenty of people around the gambling games, the tourists and others all sure back the same. Women have parties to go down and see the sights and also play them. I think that Kathryn is a little now on the mend and if she would go out a little each day it would help quite a bit. But of course it is hard to take the three children when she goes out that is why I think she does not go out enough. I have not received any letter from out at the ranch and do

(Testimony of Clarence Sadler.)

not know whether they have sent you any more data or not. I guess they now are guessing what to do in regard to the same but judge he cannot get any money to take up the proposition.

I suppose that Floyd will soon be going home for vacation as the University has closed here in Reno and the students all left. I think the Public Schools close here about June 6.

There is very little snow on the mountains around here but as yet they have not opened the gates up at Tahoe.

I judge that you are now busy as the other party has by this time gone to Washington, and working on your report about the data you gathered in Los Angeles.

I hope that Bruce is getting along all right and the trouble with his eye is leaving him.

Patricia, Edward, George and Helen all send their love and kisses to you all. I will take the flowers over to Carson City perhaps the evening of the 29th or it might be the 30th.

Nothing else of any news on items of importance.

From your Brother,
ALFRED.

[Endorsed]: Filed Oct. 15, 1946.

(Testimony of Clarence Sadler.)

Q. I show you Plaintiff's Exhibit 32 for identification, which consists of two letters, one dated June 16, 1931, with the envelope, and a letter dated June 7, 1931. Will you state what those are?

A. The letter dated June 16, 1931, and addressed to "Dear Clarence" and signed "Alfred" is a letter I received by the mail from Alfred and it is signed by him and it is in his handwriting and the envelope in which the letter was enclosed is postmarked June 16, 1931. It is addressed to me at 2409 Adar Street, Berkeley, California.

Q. Is that the envelope in which you received the letter? [185]

A. That is, and also the following letter, dated June 7, 1931, addressed to "Dear Alfred" and signed "Ethel" accompanied Alfred's letter of June 16, 1931, and was enclosed in the same envelope and the letter dated June 7, 1931, is in the handwriting of Ethel Sadler, wife of Edgar A. Sadler.

Mr. Thompson: I offer Exhibit 32 for identification in evidence, your Honor.

Mr. Cooke: The defendant, Edgar Sadler, objects to the admission in evidence of Plaintiff's Exhibit No. 32 for identification, particularly to that portion of it identified as being letter dated June 16, 1931, from Alfred to Clarence, on the ground that it purports to be statements made by Alfred and no foundation laid showing that Alfred could speak on behalf of Edgar Sadler. The same is hearsay and the matter contained is irrelevant and immaterial to any issue in the case. We make

(Testimony of Clarence Sadler.)

the special objection to the letter annexed, dated June 7, 1931, written by Ethel Sadler, on the ground no foundation has been laid for the admission of that document as being made by any one authorized to make any binding statements to the defendant in this case. The wife is not, by the mere fact of being a wife, authorized to make any representation in regard to the business of the community or community property.

The Court: You make the same objection as before?

Mr. Cooke: As a special objection as to the letter signed Ethel. [186]

The Court: Same ruling. The exhibit will be admitted as Exhibit 32.

PLAINTIFF'S EXHIBIT No. 32

Eureka, Nev.
June 7, 1931

Dear Alfred:

We received your letter some time ago and hope you will be more satisfied with your new home. It was quite a task for Kathryn to move when she wasn't so well.

Am sorry to hear about little Bruce wearing glasses—There was a little girl just three at the hotel wearing glasses.

We received a letter from some real estate firm that Clarence had spoken to wishing more data which I sent also some pictures of the spring and house and barns.

(Testimony of Clarence Sadler.)

I don't imagine anyone would buy a year like this and we wouldn't sacrifice our cattle after staying with them so long unless we got a good price.

The say Moffats man has bought all the surplus hay for \$10 a ton and that steers will be \$.04 a lb. this year, if that is the case we will have to borrow to run on after selling steers.

We are as desirous to sell as anyone if we get a satisfactory price but I think it ridiculous to even talk sell a year like this it seems to me it shows poor business ability.

We will send whatever we receive from the Real Estate men on to you—

With love to all and hoping all are enjoying good health now.

With love,

ETHEL.

Reno, Nevada
June 16, 1931

Dear Clarence:

Just a few lines to let you know that we are all enjoying fair health and making the best of conditions.

Last evening it rained and the tops of the mountains had a light covering of snow. We are having sort of rainy weather now which makes it good for the farming as they need water. The River is about dry and the winds has been hard on the garden

(Testimony of Clarence Sadler.)

truck. The open gambling, horse race and prize fight has sure brought plenty to the town. The hotels and cafes are doing a big business. The rates at the hotels have all been doubled from what they used to be. I guess about ten thousand no doubt will take in the fight from reports. Plenty of fronts have been changed to make place for the new gambling places. \$70,000 has been spent out at the race track for the new ring and casino in regard to the horse racing and prize fight. Kathryn had all her lower teeth taken out and I guess in a month will have a new set of upper and lower. She beat me in regard to having her teeth taken out and also has had her hair bobbed so you see, she thinks that it relieves her headache and no doubt is less trouble taking care of the same as she has it cut men style right now maybe later will have a way put in the same when it grows a little more.

I enclose a letter that I received from Ethel. She says that she has sent some data to the real estate men in Los Angeles.

It looks as if she is getting afraid that a buyer is going to show in regard to the ranch.

I said that she said the price of the ranch was \$65,000—\$13,500=\$51,500 cash and the buyer to assume the mortgage of \$13,500 which I thought was a good price for the property. What they want in regard to cattle, I do not know and they do not say.

It looks as if they now are beginning to worry a little because she has went in Reinhold in buying cattle and prize is dropping in regards to same.

(Testimony of Clarence Sadler.)

With love to all from us all. Hoping that everything is going right and you all are enjoying fair health.

Your brother,

/s/ ALFRED.

(Copy of Envelope)

[From] Alfred R. Sadler, United States Department of the Interior, General Land Office, Box 433, Reno, Nevada.

(Air Mail Stamp) Reno, Nev 2, June 16, 6 P.M. 1931.

[To] Mr. Clarence T. Sadler, 2409 Cedar Street, Berkeley, California.

[Endorsed]: Filed Oct. 15, 1946.

Q. Mr. Sadler, I show you again Exhibit No. 28. After receiving that letter and enclosures, did you do anything with regard to the Diamond Valley Ranch property?

A. Yes, I listed it with two real estate firms in San Francisco, one firm Bunker & Caldwell; another firm located on the first floor of the Flatiron Building.

Q. Did you list it with real estate firms or agents in any other city?

A. I may have listed it with one firm in Los Angeles, I am not positive.

(Testimony of Clarence Sadler.)

Mr. Thompson: That completes our evidence regarding the transaction in 1931, your Honor, and would be a convenient time to stop, if satisfactory with your Honor.

The Court: Then we will be in recess in this case until tomorrow morning at 10:00 o'clock.)

(Recess taken at 5:00 p.m.) [187]

Wednesday, October 16, 1946, 10:30 A.M.

Appearances same as at previous sessions.

CLARENCE SADLER
resumed the witness stand on further

Direct Examination

By Mr. Thompson:

Q. Mr. Sadler, while you were testifying yesterday Mr. Cooke asked you about Plaintiff's Exhibit No. 22, which is a copy of a letter you wrote to Alfred Sadler dated August 4, 1925.

A. Yes, sir.

Q. You testified there was an answer to that letter? A. I did.

Q. I show you Plaintiff's Exhibit 33 for identification. Will you state what that is please?

A. This is a letter dated August 6, 1925, addressed to "Dear Clarence" and signed "Alfred" and it was received by me through the mails and it is in Alfred's handwriting and his signature.